

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





75 - 1246 ✓

B  
P/S

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----  
UNITED STATES OF AMERICA,

Appellee,

- against -

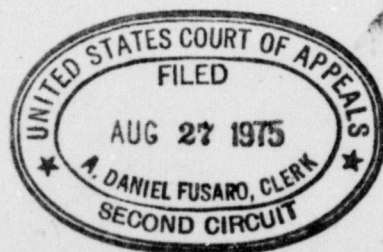
FERGUS M. SLOAN, JR., et al.,

Appellants.  
-----

ON APPEAL FROM AN ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
NEW YORK  
-----

APPELLANT'S APPENDIX

SAXE, BACON & BOLAN, P.C.  
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Fergus M. Sloan, Jr.  
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New York, New York 10021  
(212) 472-1400



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TABLE OF CONTENTS

Appendix

	<u>Page</u>
Docket Entries . . . . .	1a
Indictment 74 Cr. 859 - September 10, 1974 . . . . .	9a
Letter of Judge Knapp - May 7, 1975 . . . . .	24a
Letter of Kenneth Feinberg - June 5, 1975 . . . . .	26a
Excerpts of Sentence - June 16, 1975 . . . . .	32a
Judgment of Conviction - June 16, 1975 . . . . .	67a
Notice of Motion - June 25, 1975 . . . . .	68a
Affidavit in Opposition - July 8, 1975 . . . . .	74a
Reply Affidavit - July 16, 1975 . . . . .	80a
Memorandum and Order - July 3, 1975 . . . . .	83a
Notice of Appeal - July 31, 1975 . . . . .	87a

D. C. Form No. 100  
CRIMINAL DOCKET

JUDGE KNAPP

7- CML 859

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Walter J. Higgins, AUSA
1. FERGUS M. SLOAN (1st 2nd 3rd 4th)	264-6522
2. CARL W. ANDERSON (1st 2nd 3rd 4th)	
3. DONALD EUCKER (1st 2nd 3rd 4th)	
4. JOHN J. VILLANI (1st 2nd 3rd 4th)	
5. THOMAS C. KILDUFF (1st 2nd 3rd 4th)	For Defendant:
	(5) Michael C. Devine 230 Pa NYC tele: 725-5360
	(2) John J. Meglio 555 Mad. NYC tele: 355-1660
	(1) Saxe, Bacon, Bolan & Manley 39 E. 68th St. NYC 10021 tele: 472-1400

(04)	ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
			DATE	NAME	RECEIVED	DISBURSED
	Fine,		1/30/75	Piel	5-	
	Clerk,		2/4/75	Treas		5-
	Marshal, 4, 3, 5, 1, 2		6/24/75	Eaton	5-	
	Attorney,		7/1/75	Treas		5-
	<del>XXXXXX</del> 18, 15					
	<del>XXXXXX</del> 371, 78g, 78h & 78ff.					
	Consp. to viol. S.E.C. laws. (Ct. 1.)					
	Securities fraud. (Cts 2-9)					
	(Nine Counts)					

DATE	PROCEEDINGS
9-10-74	Filed indictment.
9-23-74	ALL DEFENDANTS (attys. present) Plead not guilty. Case assigned to Judge Knapp for all purposes. Motions returnable in 10 days. Bail fixed by the court as to all defts. at \$10,000. P.R.B. to be co-signed by the wives. all defts. to be photographed and fingerprinted. Motley, J.
9/30/74	Filed deft. Carl W. Anderson's notice of motion re: extending time for pre-trial motions. ret: 10/4/74.
	(OVER )



DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
9-30-74	Deft's Villani & Eucker present without counsel. The court appointed, Stanley S. Arkin, Esq. to represent Deft. Eucker & Eleanor Jackson Piel Esq. to represent deft. Villani. Knapp, J.		
9/24/74	T. Kolduff- filed P.R.B. in the sum of \$10,000.		
9/24/74	G. Eucker- filed P.R.B. in the sum of \$10,000.		
9/24/74	F. Sloan- filed P.R.B. in the sum of \$10,000.		
9/24/74	J. Vallani- filed P.R.B. in the sum of \$10,000.		
9/24/74	C. Anderson- filed P.R.B. in the sum of \$10,000.		
10/9/74	T. Kilduff- filed notice of appearance by atty. (see atty. list)		
10/9/74	C. Anderson- filed notice of appearance by atty. (see atty. list)		
10/9/74	F. Sloan- filed notice of appearance by atty. (see atty. list)		
11/13/74	J. Villani- filed notice of motion re: bill of particulars and discovery and memorandums in support of motions. ret: 12/25/74.		
12/24/74	C. Anderson- filed affdvt. of Jerome J. Londin in support of application of deft. for the temporary enlargement of his bail limits, etc.		
12/30/74	Filed memo. and, on affdvt. docketed 12/24/74. deft. Anderson's bail limits are enlarged to permit him to travel to Florida on 12/26/74 or thereafter, and to remain there on vacation until 1/6/75 by which date he must return to N.Y. Knapp, J. mn		
1/24/75	Filed N.Y. Stock Exchange, Inc.'s affdvt. in opposition to request for stay.		
1/24/75	Filed memo. of law of N.Y. Stock Exchange, Inc.'s in opposition to motion of deft. Villani for a stay of disciplinary proceedings against him by N.Y. Stock Exchange, Inc.		
1/24/75	Filed J. Villani's notice of motion re: stay of proceedings, etc.		

## Docket Continuation

DATE	PROCEEDINGS
1/29/75	Filed OPINION # 41820 - ...Accordingly, the defts.' motion to enjoin The New York Stock Exchange is denied. Knapp, J. mn
1/30/75	Filed defts John Villani and Donald Eucker's appeal from order of 1/29/75 denying injunction and/or stay of proceedings, etc. mailed notices.
1/31/75	Filed debt's Fergus M. Sloan, Jr. affidavit & notice of motion directing plttf. to serve a bill of particulars.
1/3/-75	Filed debt's memorandum of law in support of motion Re: Bill of particulars.
1/30/75	Filed defts. John Villani and Donald Eucker notice of appeal from order denying defts. an injunction and/or stay, etd. mailed notice
1/31/75	Carl Anderson- filed notice of motion re: discovery and inspection and affdvt. ret: 2/10/75.
1/31/75	Carl Anderson- filed notice of motion re: in camera inspection of Grand Jury minutes by Court under Rule 6(e) and to dismiss indictment under Rule 12, ret: 2/10/75.
1/31/75	Carl Anderson- filed notice of motion re: order striking prejudicial surplage under rule 7(d).
1/31/75	Carl Anderson- filed memo. of law re: support of motion for discvoery and inspection.
1/31/75	Carl Anderson- filed memo. of law re: support of motion for in camera inspection of Grand Jury minutes, etc.
1/31/75	Carl Anderson- filed notice of motion re: dismissal, etc. ret: 2/10/75
1/31/75	Carl Anderson- filed memo. of law re: support of motion for dismissal
1/31/75	Carl Anderson- filed notice of motion re: bill of particulars, etc. ret: 2/10/75.
2-4-75	Filed debt. Anderson's memo of law on support of motion b/p
2/10/75	Deft. Villiani (atty. present) makes application for an extenssion of bail limits. Limits extended to include the Continental US. without application and foreign countries on 10 days notice to the U.S. Atty's office, wherein, a letter from the U.S. Atty. stating there is no objection will be sufficient for the Court to grant the application Knapp, J.
2-12-75	Filed memo-end. on motion docketed 1/31/75. Motion for an in camera insepction of grand jury minutes by court under Rule 6(e) and the motion to dismiss the indictment pursuant to Rule 12 is denied. Knapp, J. mn



DATE	PROCEEDINGS	Date of Judgment
12-13-75	Filed memo-end. on motion docketed 1/31/75. Motion to dismiss counts one, eight and nine are denied. See, Rule 7(c) and Rule 8 FRCP. As to the motion to dismiss Counts two through seven of the indictment, see memorandum and order dated 2/12/75. Knapp, J. mn	
12-13-75	Filed memo-end. on motion docketed 1/31/75. Motion to strike prejudicial surplusage in the indictment is denied, except with respect to the last sentence in paragraph one of the indictment. Knapp, J. mn	
12-13-75	Filed OPINION # 41877 - ...In summary, we find that the prosecution for the crimes charged in counts two through seven of the indictment is barred by the Statute of limitations. Accordingly, counts two through seven are dismissed. Knapp, J. mn	
03-06-75	Filed deft. C. Anderson's suppl. memo of law in support of motion to dismiss count 9 of the indictment.	
3-12-75	Filed deft. C. Anderson's notice of motion re: dismissal under Rule 12(b).	
3-12-75	Filed deft. C. Anderson's memo. of law in support of motion to dismiss.	
3-13-75	Filed transcript of proceedings, dated Jan 24, 1975.	
3-14-75	Deft. Kildruff & Atty. (Michael C. Devine, Esq.) present. Deft. withdraws his plea of not guilty & pleads guilty to count 1 only. Pre-sentence investigation ordered. Sentence adj'd. to 5-15-75 at (9:30) Bail conditions cont'd. Deft. Eucker & Atty. (Stanley S. Arkin, Esq.) present. Deft. withdraws his plea of not guilty & pleads guilty to count 9 only. Pre-sentence investigation ordered. Sentence adj'd. to 5-15-75 at 9:30. Bail cont'd. Bonsal, J.	
3-13-75	Filed Memorandum and Order that after reviewing the papers submitted on behalf of this application, it is the court's view that the motion should be denied. Knapp, J. mn (deft. Anderson's motion for reconsideration of motion to dismiss count 9)	
3-31-75	Deft. Sloan Jr. (Atty. Harry Braustein present) Deft. withdraws his plea of not guilty & pleads guilty to Count 1 only. P.S.I. ordered, sentence adj'd. to 5-15 75 at 9:30 A.M. Bail conditions continued. Conner J.	
4-02-75	Deft. Anderson & Atty. (Jerome J. Londin, Esq.) and deft. Villani & Atty. (Eleanor Jackson Piel, Esq.) present. Jury trial begun before Judge Knapp.	
4-03-75	Trial cont'd.	
4-04-75	" "	
4-08-75	" "	
4-09-75	" "	
4-10-75	" "	
4-11-75	" "	
4-14-75	" "	
4-15-75	" "	



D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	F Ju
04-16-75	Jury trial cont'd. as to defts. Anderson & Villani.	
04-17-75	Trial cont'd.	
04-21-75	" "	
04-22-75	" "	
04-23-75	" "	
04-24-75	" "	
04-25-75	" "	
04-28-75	" "	
04-29-75	" " Jury retires to deliverate at 12:40PM.	
04-30-75	Trial cont'd. and concluded. Jury resumes deliberations at 10AM. Jury returns with a verdict at 2:15PM. Deft. Anderson guilty on count 1 not guilty on count 2. Deft. Villani not guilty on counts 1 and 2. Pre-sentence investigation ordered on deft. Anderson. Sentence adj. to 6-16-75 at 9:30. Deft. cont'd. released on own recognizance. Knapp, J.	
	<i>Transcript of record of proceedings, dated 4/14-15-16/75</i>	
5-15-75	Filed transcript of record of proceedings, dated 4/14-15-16/75	
5-15-75	Filed transcript of record of proceedings, dated 4/17-21-22-23/75	
5-15-75	Filed transcript of record of proceedings, dated 4/24-25-28-30/75	5/1/75
05-28-75	Filed transcript of record of proceedings, dated May 14, 1975.	
06-10-75	Filed deft. Carl W. Anderson's notice of motion re: judgment of acquittal under rule 29(c) and alternatively, for a new trial under rule 33 ret: 6-16-75.	
06-12-75	Filed deft. Anderson's suppl. affdvt. in support of motion under Rules 29(c) and 33 and with respect to sentencing.	
06-23-75	Filed Govt.'s request to charge.	
06-23-75	Filed deft. D. Eucker's notice of motion re: dismiss count 9, etc.	
06-23-75	Filed Govt.'s bill of particulars and response to motions for discovery and to dismiss the indictment.	
06-23-75	Filed memo. of N.Y. Stock Exchange, Inc. in opposition to motion of deft. Villani for stay of disciplinary proceedings against him by N.Y. Stock Exchange, Inc.	
6-23-75	Filed memo. of law in support of deft.'s D. Eucker motion to dismiss counts 2 through 7 of the indictment.	
6-23-75	Filed Govt.'s memo. of law.	
06-23-75	Filed Govt.'s memo. of law re: deft.'s motion to enjoin.	
06-23-75	Filed deft. D. Eucker's notice of motion re: dismiss cts 2-7.	
06-23-75	Filed memo. of law in support of deft. Eucker's motion for dismissal of counts 2-7.	

Page 5

Judge Knapp

74 Cr. 859

	PROCEEDINGS	Date On Judgment
6-20-75	Filed deft. Anderson's memo. of law in support of motion under Rule 35 to set aside sentence of imprisonment.	
6-25-75	Filed deft. F. Sloan, Jr.'s notice of motion re: withdraw guilty plea, etc.	
<del>6-25-75</del>	<del>Filed transcript of record of proceedings, dated 3-14-75</del>	
<del>6-27-75</del>	<del>Filed transcript of record of proceedings, dated 4-3-75</del>	
6-25-75	Filed deft. Donald Eucker's notice of appeal from judgment of 6-16-75. Mailed copies to U.S. Atty. and deft. on 6-30-75.	
6-30-75	(deft. D. Eucker sentenced 6-16-75 - judgment docketed 6-30-75 pur. Knapp, J.) DONALD EUCKER (atty. present) Filed JUDGMENT - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR and ONE (1) DAY. Execution of said sentence is stayed pending appeal. Present bail continued and deft. to file new bail pending appeal. On deft.'s motion, with the consent of the Govt., the open counts are dismissed. Knapp, J. issued all copies.	
6-30-75	(deft. T. Kilduff sentenced 6-16-75 - judgment docketed 6-30-75 pur. Knapp, J.) THOMAS C. KILDUFF (atty. present) Filed JUDGMENT - the imposition of sentence is suspended on count 1 and the deft. is placed on unsupervised probation for a period of THREE (3) YEARS, pursuant to the standing probation order of this Court. On deft.'s motion with the consent of the Govt., the open counts are dismissed. Knapp, J. issued all copies.	
7-03-75	(deft. C. Anderson sentenced 6-16-75 - judgment docketed 7-3-75 pur. Knapp, J.) CARL W. ANDERSON (atty. present) Filed Judgment - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR and ONE (1) DAY. Execution of the sentence is stayed pending appeal. Present bail cont'd. and deft. to file new bail pending appeal. Knapp, J. issued all copies.	
7-03-75	(deft. F. M. Sloan, Jr. sentenced 6-16-75 - judgment docketed 7-3-75 pur. Knapp, J.) FERGUS M. SLOAN, JR. (atty. present) Filed Judgment - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR and ONE (1) DAY on count 1. Execution of the sentence is stayed pending appeal. Present bail cont'd. and deft. to file new bail pending appeal. On deft.'s motion with the consent of the Govt., the open counts are dismissed. Knapp, J. issued all copies.	
7-03-75	Filed OPINION # 42730 - deft. C. Anderson's moves to set aside judgment of conviction... Accordingly, Anderson's motion to set aside the sentence of imprisonment is denied. Final Judgment will enter within five days. The execution of sentence will be stayed pending appeal. Knapp, J. mn	
7-03-75	Filed OPINION 42729 - deft. F. Sloan moves for leave to withdraw his plea... In conclusion, I may say that the letter was totally without effect upon the sentence imposed, which is the minimum I felt could conscientiously be arrived at. Accordingly, the motion granting leave to withdraw his plea is denied. Knapp, J. mn	



D. C. 116 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	1 Ju
08-07-75	CARL, W. ANDERSON-Filed Corrected Judgment-(atty.present)deft. is committed to the custody of the Atty. Gen'l. for imprisonment a period of ONE (1) YEAR and ONE (1) DAY. Execution of the sentence is stayed pending appeal. Present bail continued and deft. to file new bail pending appeal. Knapp,J. issued all copies.	
07-08-75	Filed Govt.'s affdvt. re: opposition to deft. Anderson's motion for judgment of acquittal.	
07-08-75	Filed Govt.'s affdvt. re: response to motion of deft. Fergus M. Sloan to withdraw guilty plea.	
07-16-75	Filed deft. Fergus M. Sloan Jr.'s reply affdvt re: Govt.'s opposition to deft.'s motion to withdraw guilty plea.	
07-16-75	C. Anderson-filed notice of appeal from judgment of 6-7-75. Mailed copies to U.S. Atty. and deft on 7-17-75.	
07-16-75	Filed notice that the record on appeal has been certified and transmitted to the U.S.C.A.	
07-16-75	Filed stipulation re: papers to be transmitted to U.S.C.A.	
*12-13-74	Filed Govt's Notice of Readiness for Trial.	
*6-2-75.	Filed transcript of record of proceedings dtd: March 31-75.	
*7-28-75	Filed notice that the suppl. record on appeal has been certified and transmitted to the U.S.C.A.	
07-29-75	Filed Govt.'s memo. of law re: support of offer into evidence of a summary chart.	
07-29-75	Filed notice that the second suppl. record on appeal has been certified and transmitted to the U.S.C.A.	
07-31-75	Filed deft. Fergus M. Sloan's notice of appeal from order denying leave to withdraw guilty plea of 7-3-75. Mailed copy to U.S. Atty. and deft.	
08-01-75	Filed N.Y. Stock Exchange's notice of motion re: release G.J. testimony ret: 8-7-75.	
08-01-75	Filed N.Y. Stock Exchange's memo. of law in support of motion.	
08-08-75	Filed memo-end. on motion docketed 8-1-75. It seems likely that I would grant this motion, but I think it appropriate that the deft. be heard. The motion is denied without prejudice to renewal before me as any Part One Judge upon the giving of notice to the deft. in the criminal action. Knapp,J.	
08-08-75	Filed transcript of record of proceedings, dated 6-16-75.	

DATE	PROCEEDINGS	Date Of Judgment
08-13-75	Filed CJA 20 approval for payment of fees of atty. Mrs. E. Piel (for deft. J. Villani) Knapp, J. issued all copies CAA Clerk	
08-21-75	Filed stipulation designating exhibits to be transmitted to the U.S.C.A.	
08-21-75	Filed stipulation correcting transcript.	
08-20-75	F. Sloan-filed notice that the suppl. record on appeal has been certified and transmitted to the U.S.C.A.	
08-21-75	C. Anderson-filed notice that the suppl. record on appeal has been certified and transmitted to the U.S.C.A.	
08-20-75	Filed stipulation as to the contents to be included on the record on appeal.	



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

9a

74 CM. 859

UNITED STATES OF AMERICA,

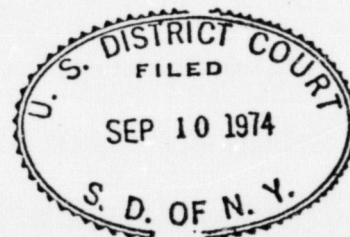
- v -

FERGUS M. SLOAN, JR.,  
CARL W. ANDERSON,  
DONALD EUCKER,  
JOHN J. VILLANI, and  
THOMAS C. KILDUFF,

Defendants.

INDICTMENT

74 Cr.



The Grand Jury charges:

Introduction

1. At all times relevant herein, Orvis Brothers & Co. ("Orvis"), a New York limited partnership doing business as a securities brokerage firm, was a member of the New York and American Stock Exchanges and the National Association of Securities Dealers, Inc., having its principal place of business at 30 Broad Street, New York, New York. Orvis transacted a business in securities on its own behalf and on behalf of approximately 23,000 customers. In 1969 and 1970 Orvis experienced substantial losses which endangered its net capital and impaired its ability to remain solvent. As of June 3, 1970, Orvis was suspended as a member of the New York and American Stock Exchanges.

2. The defendant FERGUS M. SLOAN, JR., at relevant times herein, was the managing partner of Orvis and, as such, had and exercised the overall responsibility for Orvis' operations.

3. The defendant CARL W. ANDERSON, at relevant times herein, was the Chairman of the Executive Committee of Orvis and, as such, had the responsibility of assuring that the policies of the Executive Committee were enforced. In addition, ANDERSON was the partner in charge of corporate finance. 10a

4. The defendant DONALD EUCKER, at relevant times herein, was the partner in charge of operations at Orvis and a member of the Executive Committee. As such, EUCKER was responsible for the day to day operation of Orvis, including the supervision of "cage" operations and maintaining proper segregation of customer-fully-paid-for securities.

5. The defendant JOHN J. VILLANI, at relevant times herein, was a partner and a member of the Executive Committee.

6. The defendant THOMAS C. KILDUFF, at relevant times herein, was the partner in charge of financial operations and a member of the Executive Committee.

#### COUNT ONE

##### The Conspiracy

The Grand Jury further charges:

1. From on or about the 1st day of September, 1968, up to and including the 30th day of June, 1971, in the Southern District of New York and elsewhere, FERGUS M. SLOAN, JR., CARL W. ANDERSON, DONALD EUCKER, JOHN J. VILLANI, and THOMAS C. KILDUFF, the defendants, and Orvis, named herein as a co-conspirator but not as a defendant, and others to the Grand Jury



known and unknown, unlawfully, wilfully and knowingly did 11a  
combine, conspire, confederate and agree together and with  
each other to commit offenses against the United States and  
to violate the following laws of the United States: Title  
15, United States Code, Sections 78g, 78h, 78j(b), 78q(a)  
and 78ff; 12 C.F.R. 220; 17 C.F.R. Sections 240.8c-1,  
240.10b-5, 240.17a-3, 240.17a-4, 240.17a-5.

#### OBJECTS OF THE CONSPIRACY

2. It was part of said conspiracy that said de-  
fendants and their co-conspirators unlawfully, wilfully and  
knowingly would, directly and indirectly, hypothecate and  
arrange for and permit the continued hypothecation of fully  
paid for securities carried for the account of customers of  
Orvis under circumstances that permitted such securities to  
be hypothecated and subjected to liens and claims of pledgees.

3. It was further a part of said conspiracy that  
said defendants and their co-conspirators unlawfully, wilfully  
and knowingly would, directly and indirectly, by the use of  
means and instrumentalities of interstate commerce, of national  
securities exchanges, and of the mails, use and employ manipu-  
lative and deceptive devices and contrivances in connection  
with the purchase and sale of securities in contravention of  
Rule 10b-5 (17 C.F.R. Section 240.10b-5), a rule prescribed  
by the United States Securities & Exchange Commission (S.E.C.)  
as necessary and appropriate in the public interest and for  
the protection of investors.

4. It was further a part of said conspiracy that 12a said defendants and their co-conspirators unlawfully, wilfully and knowingly would, directly and indirectly, make, keep and preserve and cause to be made, kept and preserved false and fraudulent books, accounts and other records of Orvis which purported to reflect the true, accurate and current financial condition of Orvis, when in truth and in fact as the defendants well knew, said books, accounts and other records were materially false and fraudulent, in contravention of Rules 17a-3 and 17a-4 (17 C.F.R. Sections 240.17a-3 and 240.17a-4), rules prescribed by the S.E.C. as necessary and appropriate in the public interest and for the protection of investors.

5. It was further a part of said conspiracy that said defendants and their co-conspirators unlawfully, wilfully and knowingly would, directly and indirectly, make and cause to be made false and misleading statements in applications, reports and documents required to be filed with the S.E.C., which statements were false and misleading with respect to a material fact or facts, in contravention of Rule 17a-5 (17 C.F.R. Section 240.17a-5), a rule prescribed by the S.E.C. as necessary and appropriate in the public interest and for the protection of investors.

6. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly, would, directly and indirectly, extend credit and arrange for the extension and maintenance of credit to and



WJH, Jr.:ma

for customers of Orvis on securities in contravention of Regulation T of the Board of Governors of the Federal Reserve System (12 C.F.R. Section 220), a regulation prescribed by the Federal Reserve System for the purpose of preventing the excessive use of credit for the purchase or carrying of securities.

MEANS OF THE CONSPIRACY

7. Among the means by which the defendants and their co-conspirators would and did carry out the conspiracy were the following:

(a) In or about April, 1969, the defendants SLOAN, ANDERSON, EUCKER, VILLANI, and KILDUFF, discovered that Orvis was in violation of New York Stock Exchange Rule 325 which prohibits a member firm's aggregate indebtedness to exceed twenty times its net capital. Instead of reporting the serious financial condition of Orvis to the Exchange and SEC, as required, the defendants and their co-conspirators would and did engage in a course of conduct to fraudulently conceal the true financial condition of Orvis.

(b) The defendants SLOAN, ANDERSON, VILLANI, EUCKER and KILDUFF and others would and did show as valid present income and good capital on the books and records of Orvis projected commissions receivable from Clinton Oil Company ("Clinton") on the sale to the public of an estimated \$20,000,000.00 of participating interests in Clinton Oil and Gas Programs in 1969. In order to accomplish this the defendants would cause the opening of a customer's cash account in the name of Clinton Oil Company to record projected commissions receivable in 1969 in the amount of \$797,100.00 and to reflect the account on the books and records of Orvis so as to overstate the firm's capital in the 17A-5 report filed with the SEC on October 16, 1969.

(c) The defendant KILDUFF with the consent of the other defendants would cause the omission of certain expenses, namely commissions payable to the firm's sales representatives, from the books and records of Orvis for the purpose of overstating the firm's net capital.

(d) The defendants SLOAN, EUCKER and KILDUFF with the consent of the other defendants, would use \$500,000.00 paid to Orvis on August 22, 1969, on account of the commissions receivable from Clinton, to offset losses in excess of \$1,000,000.00 realized in 1969 in the Orvis trading account without reducing the outstanding debit in the Clinton receivable account.



(e) The defendants SLOAN, EUCKER, and KILDUFF with the consent of the other defendants would and did post without cost as securities in the firm's capital in April and May, 1969, 9,344 shares of Clinton Oil common stock, valued at \$275,000.00, which the defendants well knew had been delivered for sale by a customer.

15a

(f) The defendants SLOAN and EUCKER with the consent of the other defendants would and did reduce the firm's capital investment subject to 30% haircut provision of Rule 325. In order to accomplish this SLOAN and EUCKER would and did cause the posting on the books and records of a phony sale of 80,000 shares of Clinton Oil common stock for \$880,000.00 to the Clinton Oil Pension Fund.

(g) The defendants SLOAN, ANDERSON, EUCKER, VILLANI and KILDUFF would and did cause the extension and maintenance of credit to customers' cash accounts in violation of Reg T including but not limited to the following:

<u>MARTIN ACCOUNT</u>	DEBIT BALANCE
(52-6042)	<u>8/31/69</u>
	\$326,000.00
<u>BOZEMAN ACCOUNT</u>	
(14-1682)	\$133,000.00
<u>FUND OF LETTERS ACCOUNT</u>	
(05-6910)	\$484,000.00
<u>AQUARIOUS ACCOUNT</u>	
(03-4862)	\$ 32,740.00

(h) The defendant EUCKER with the consent of the other defendants and others would and did permit and cause as a regular business practice in 1969 and 1970 the hypothecation of fully paid for securities held by Orvis for the account of customers to bank and stock loans obtained for the benefit of Orvis in amounts in excess of \$7,000,000.00.

16a

#### OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. On or about February 5, 1969, the defendant ANDERSON caused Orvis to issue a check to Mrs. Rosa Bull in the amount of \$201,778.75 on account of the sale of 8,425 shares of unregistered International Control stock with knowledge that said trade had been disclaimed by the alleged purchaser of the stock.
2. On or about April 16, 1969, the defendants SLOAN and KILDUFF with the consent of ANDERSON, EUCKER and others caused the receipt without cost of 4,344 shares of Clinton Oil stock into the Orvis trading account (62-2070) which were delivered to Orvis for sale for the account of a customer.
3. In or about April, 1969, the defendant KILDUFF told the other defendants that he estimated the ratio



of Orvis' aggregate indebtedness to net capital to be in excess of 30:1. At that time each defendant agreed that everything should be done to keep the firm in business, including the falsification of the books and records of Orvis.

4. On or about April 30, 1969, the defendants SLOAN, EUCKER and KILDUFF with the consent of the other defendants, caused the erroneous posting in the customers cash account captioned Clinton Oil Company (55-1400) a cash debit of \$797,100.00.

5. On or about May 15, 1969, the defendants SLOAN and KILDUFF caused the receipt without cost of 5,000 shares of Clinton Oil stock into the Orvis trading account (62-2070) when in fact the shares were delivered for sale to the firm at a fixed price.

6. On or about August 20, 1969, the defendants attended a General Partners Meeting of Orvis held at the New York Athletic Club in New York City.

7. On or about August 22, 1969, the defendants SLOAN, EUCKER and KILDUFF caused the erroneous credit to the Orvis Trading Account (62-2075) of \$500,000.00 received as advance payment on commissions receivable from Clinton.

8. On or about August 28, 1969, the defendants SLOAN, EUCKER and KILDUFF caused the transfer of securities from a subordinated loan account to the Clinton Oil Account (55-1400).

9. On or about August 28, 1969, the defendants SLOAN and ANDERSON caused the erroneous posting of a sale of 80,000 shares of Clinton Oil for \$880,000.00 from the Orvis Trading and Investment Accounts (62-2075, 62-2080) to the Clinton Oil Pension Fund.

10. On or about September 3, 1969, the defendants received a telegram from Clinton Oil refusing to confirm the 80,000 share trade.

11. In or about September, 1969, the defendant SLOAN met with Rick Clinton in Wichita, Kansas.

12. On or about October 16, 1969, the defendants SLOAN, ANDERSON, EUCKER, VILLANI and KILDUFF caused the filing of a materially false and incomplete Financial Questionnaire (Form X17a-5) by Orvis with the SEC in New York City.

13. In or about the first week of December, 1969, the defendant SLOAN caused the mailing of a customers' statement to the Clinton Oil Pension Fund.



14. On or about December 8, 1969, the defendant SLOAN received a telegram for Clinton Oil disclaiming an alleged \$880,000.00 due Orvis for the purchase of 80,000 shares of Clinton Oil common stock.

15. In or about October and November, 1969, the defendant EUCKER told an employee of Orvis to use customers' fully paid securities as collateral on bank loans obtained by Orvis.

16. In or about October and November, 1969, the defendant EUCKER with the consent of the other defendants instructed employees of Orvis to continue the extension of credit to certain customers cash accounts which were in violation of Reg. T.

(Title 18, United States Code, Section 371.)

COUNTS 2 THROUGH 7

The Grand Jury further charges:

1. From on or about the 1st day of March 1969, up to and including the 16th day, of October, 1969, in the Southern District of New York, Orvis Brothers & Co., 30 Broad Street, New York, New York ("Orvis"), a member of a national securities' exchange, directly transacted business in securities directly with and for others not members of a national securities exchange and, further, was a broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, and therefore was required by law [17 C.F.R. 240-17a-3(a)] to make and keep accurate and current books and records.

2. From on or about the 1st day of March, 1969, up to and including the 16th day of October, 1969, FERGUS M. SLOAN, JR., CARL W. ANDERSON, DONALD EUCKER, JOHN J. VILLANI, and THOMAS C. KILDUFF, the defendants, unlawfully, wilfully and knowingly, did falsely make and maintain Orvis' books and records in a fashion which represented that Orvis' financial condition was sound when, in truth and in fact, as the defendants then and there well knew, Orvis was in serious financial trouble and was suffering significant losses which substantially impaired, and threatened to impair, its ability to remain solvent, which books and records hereinafter listed, were not current and accurate as hereinafter described:

COUNT	DATE OF FALSE ENTRY	FALSE ENTRY	DEFENDANTS
2	4/30/69	Recording of \$797,100 as a debit in the Orvis' cash account (55-1400), captioned Clinton Oil Co. 1969 Oil units.	Sloan Anderson Eucker Villani Kilduff
3	8/26/69	Recording of \$500,000 as a credit to Orvis' Firm trading account (62-2075).	Sloan Anderson Eucker Villani Kilduff
4	8/28/69	Transferring of securities from R.P. Clinton's subordinated loan account (06-8808), to account 55-1400 to secure the debit balance	Sloan Anderson Eucker Villani Kilduff
5	8/28/69	Recording of a fictitious sale by Orvis of 80,000 shares of Clinton Oil stock for \$880,000 to the Clinton Oil Co. Pension Fund, (Account No. 06-2075).	Sloan Anderson Eucker Villani Kilduff



<u>COUNT</u>	<u>DATE OF FALSE ENTRY</u>	<u>FALSE ENTRY</u>	<u>DEFENDANTS</u>
6	4/16/69	Recording of 4,344 shares of Clinton Oil stock without attributing cost to the Firm trading account, 62-2070	Sloan Anderson Eucker Villani Kilduff
7	5/20/69	Recording of 5,000 shares of Clinton Oil stock without attributing cost to the Firm trading Account, 62-2070	Sloan Anderson Eucker Villani Kilduff

(Title 15, United States Code, Sections 78q(a) and 78ff, 17 C.F.R. Section 240.17a-3).

COUNT 8

The Grand Jury further charges:

1. Orvis Brothers & Co., (Orvis) was a brokerage firm, a member of the New York Stock Exchange and American Stock Exchange, and was registered as a broker and dealer pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, and therefore was required by law (17 C.F.R. 240-17a-5), to file for the 1969 fiscal year a report of financial condition containing the information required by Form X-17A-5.

2. On or about the 16th day of October, 1969, in the Southern District of New York, FERGUS M. SLOAN, JR., CARL W. ANDERSON, DONALD EUCKER, JOHN J. VILLANI, and THOMAS C. KILDUFF, the defendants, unlawfully, wilfully and knowingly did make, and cause to be made, statements in an X-17A-5 report of financial condition of Orvis which statements were false and misleading with respect to material facts in that:

- a) Statements of the trading and investment accounts of Orvis were falsely inflated.
- b) Statement of the correction of customers' fully paid securities loaned and pledged in error was false.
- c) Statement of balances in customers' cash accounts was falsely inflated.

(Title 15, United States Code, Section 78q(a) and 78ff and 17 C.F.R. Section 240.17a-5; Title 18, United States Code, Section 2.)

COUNT 9

The Grand Jury further charges:

1. From August 1, 1969 to June 3, 1970, Orvis Brothers & Co., was a brokerage firm, a member of the New York Securities and Exchange, and a registered broker and dealer pursuant to Section 15 of the Securities and Exchange Act of 1934, and, as such, was subject to the provisions of Rule 8c-1 (17 C.F.R. Section 240.8c-1), a rule prescribed by the S.E.C. for the protection of investors.

2. From on or about the 1st day of August, 1969 up to and including the 3rd day of June 1970, in the Southern District of New York, FERGUS M. SLOAN, JR., CARL W. ANDERSON, DONALD EUCKER, JOHN J. VILLANI, and THOMAS C. KILDUFF, the defendants, unlawfully, wilfully



and knowingly, did, directly and indirectly, hypothecate  
and arrange for and permit the continued hypothecation  
of fully paid for securities carried for the account of  
customers of Orvis under circumstances that permitted  
such securities to be hypothecated and subjected to liens  
and claims of pledges in amounts up to \$7,000,000.00.

(Title 15, United States Code, Sections 78h  
and 78ff and 17 C.F.R. Section 240.8c-1;  
Title 18, United States Code, Section 2.)

Richard A. Kbridge  
FOREMAN

Paul J. Curran  
PAUL J. CURRAN  
United States Attorney

UNITED STATES DISTRICT COURT

CHAMBERS OF  
JUDGE WHITMAN KNAPP  
UNITED STATES COURTHOUSE  
FOLEY SQUARE  
NEW YORK, N. Y. 10007

24a

May 7, 1975

Paul J. Curran  
United States Attorney  
One St. Andrew's Plaza  
New York, New York 10007

Attention: Kenneth Feinberg  
Assistant U. S. Attorney

Re: U. S. V. Sloan, et al-74 Cr. 859

Dear Mr. Feinberg:

I request that the Government make recommendations of sentence with respect to the defendants Sloan, Eucker and Anderson.

Among other things, I should like enlightenment on the following questions:

(a) Is the Government in a position to estimate the extent of financial loss occasioned by defendants' illegal activities, i.e., how much, if any, cash would have been saved had defendants promptly and accurately reported the firm's deteriorating financial condition to the SEC and the Exchange?

(b) What individuals or institutions were required to foot the bill?

(c) Is the Government in a position on the basis of evidence before it to suggest a relative evaluation of guilt as between the three above-named defendants?



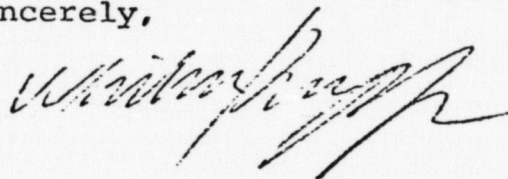
- 2 -

(d) To what extent, if any, did any defendant commit perjury in an effort to avoid discovery?

(e) Any other considerations the Government may deem pertinent.

I plan to adjourn all sentences (including that of defendant Kilduff) to June 16th at 2:00 P.M. in Room 506, and direct that any recommendation be in my hands (after having been served on counsel for the several defendants) at least a week before then.

Sincerely,



cc: Jerome Londin, Esq.  
Stanley S. Arkin, Esq.  
Roy Cohn, Esq.  
Butowsky, Schwenke & Devine

KRF:lm

June 5, 1975

Honorable Whitman Knapp  
United States District Judge  
United States Courthouse  
Room 3004  
Foley Square  
New York, New York 10007

Re: United States v. Fergus Sloan, et al.  
(74 Cr. 859)

Dear Judge Knapp:

Pursuant to your letter of May 7, in which you request certain information relative to the financial loss occasioned by the demise of Orvis Brothers, as well as a relative evaluation of the guilt of Sloan, Anderson and Eucker and whether they committed perjury in an effort to avoid discovery, the Government supplies you with the following information:

(a) The Extent of Financial Loss - I am informed by Mr. Ragusin, the liquidator of the firm, that the New York Stock Exchange suffered a direct loss of 3 1/2 million dollars arising out of Orvis Brothers' failure. This money was paid out of a special trust fund that was funded by broker members of the Exchange. However, I am also told by Mr. Ragusin that the Orvis firm did not participate in the funding of this trust fund since the fund didn't commence until June of 1970, when Orvis was about to go under. Accordingly, the defendants are in no position to argue that the money used to liquidate Orvis Brothers came, in part, from the firm itself.



Honorable Whitman Knapp  
United States District Judge

-2-

June 5, 1975

The 3 1/2 million dollars was used primarily to substitute for the customers securities that had been hypothecated to banks in the United States and Canada. Mr. Ragusin reminds me that, if Orvis had been liquidated in the spring of 1969, the hypothecation figure would have been less than six million dollars. Thus, the delay caused by the defendants activities led to a hypothecation figure almost double that which existed in the spring of 1969 (from less than six million to 11 million in July, 1970).

In addition, the limited partners, subordinated lenders and general partners of Orvis Brothers, unaware of the fraud being committed by the four defendants, lost their own investments, estimated to be around \$5,800,000.

The third group involved in the liquidation of Orvis were the general creditors of the firm. At the time of the liquidation Mr. Ragusin was forced to pay creditors only 15 to 30 cents on the dollar for debts outstanding; as a result Mr. Ragusin informs me that close to \$400,000 was lost by creditors who were unable to receive full payment from Orvis of bills outstanding. Finally, the employees of Orvis, numbering close to four hundred, had their jobs terminated abruptly in the summer of 1970 and did not receive any of the severance pay to which they were entitled. This amount is estimated to be \$50,000.

Mr. Ragusin makes two important observations about the loss suffered by the partners and firm lenders. If the firm had been liquidated in the spring of 1969 it is highly likely, that the partners would still have been wiped out; but the liquidation of their accounts (valued upward by the fact that the stocks in their accounts were generally higher at the time) would not have made it necessary to resort to the Exchange trust fund (even if one existed) - at least not in an amount anywhere near 3 1/2 million dollars. Perhaps more importantly, the Court undoubtedly recalls the testimony from various witnesses at trial, confirmed

Honorable Whitman Knapp  
United States District Judge

-3-

June 5, 1975

by Mr. Ragusin, that, even while the fraud was being perpetrated, new partners were being invited to invest capital in Orvis. Partners such as Tournet (1/2% interest) and Mazzatta (\$150,000) were asked to and, in fact, did invest well after the firm should have ceased doing business. They also were wiped out. In particular, Rick Clinton himself invested over \$2 million dollars in June of 1969 well after the defendants were aware of the 30-1 ratio. Clinto lost all of his investment.

(b) Individuals and Institutions Paying the Bills -

As I have already indicated, the New York Stock Exchange, through its special trust fund, paid a major portion of the Orvis debt; in addition, the general and limited partners, subordinated lenders and general creditors also "foot the bill."

(c) Relative Evaluation of Guilt -

In evaluating the relative guilt of Sloan, Anderson and Eucker, the Government points primarily to the fact that, despite Anderson's protestations to the contrary, he and Sloan bore the major responsibility of running the firm. Sloan was the managing partner of Orvis, the individual who actually ran the company during 1969 and 70. He pleaded guilty to conspiracy, and was familiar with every facet of Orvis' operations. Anderson was the Chairman of the Executive Committee, and an individual who had invested, directly and through relatives and friends, over \$1,000,000 in the firm. It is true that neither Sloan nor Anderson ever made any specific false entries in the books, nor did they file any false documents with the SEC under their own signature. However, Anderson and Sloan both knew what was happening and were in a position to prevent it. Instead they promoted this scheme and told Kilduff, in effect, to falsify and cover-up the true condition of the firm from the Exchange and the SEC. Kilduff and Eucker were the mechanics, but both Sloan and Anderson were the underlying bosses of the scheme.

Donald Eucker was somewhat below Anderson and Sloan in the general scheme of things. Eucker is directly responsible for the illegal hypothecation of customer securities which, by May of 1970, totaled some 11 million dollars. Eucker directed various employees of Orvis to use these customer securities as



KRF:lm

Honorable Whitman Knapp  
United States District Judge

-4-

June 5, 1975

collateral to secure Orvis bank loans. When the firm was liquidated, Ragusin was able to substitute firm assets for around 8 1/2 million dollars of the hypothecated securities. The rest was paid out primarily by the New York Stock Exchange Trust Fund. There is a serious question as to whether Sloan or Anderson were ever made aware of the extent of Eucker's hypothecation. Clearly, Kilduff was in the dark about it.

In addition, one should not ignore the testimony at trial from witnesses such as Mattel and Bascomb that Eucker, not Kilduff, assured them that although the bookkeeping practices were questionable, Eucker would have no trouble convincing the Exchange that everything was all right.

(d) Perjury - The Court also asks if Sloan, Anderson and/or Eucker committed perjury. The answer must be yes, all three defendants lying under oath at the SEC in 1971, and Anderson lying when he took the stand in the present trial. Thus, Sloan testified at the SEC that he had no knowledge that certain transactions were being left on the Orvis books improperly simply to improve the firm's capital position. Indeed, Sloan told the SEC he was not sure that any capital problem existed and, in any event, had no knowledge of any improper bookkeeping. With particular reference to the 80,000 share trade to the Clinton Pension Fund, Sloan claimed no impropriety.

Anderson repeatedly testified at the SEC that he had been eased out of power at the firm by Sloan and that he had no control over Orvis policy. In addition, he told the SEC that he was totally unaware of any transactions being placed on the books improperly simply to improve the firm's capital position. At the trial Anderson testified that he was never told by Kilduff that the firm's capital position was in violation of Exchange and SEC requirements; in addition, Anderson stated that he never helped

KRF:lm

Honorable Whitman Knapp  
United States District Judge

-5-

June 5, 1975

arrange a fictitious 80,000 share trade used to inflate Orvis capital with Clinton. Anderson testified that he was unaware of any improper transactions or bookkeeping.

Eucker testified at the SEC that he was unaware that certain bad debt accounts were being treated on the books as good customer cash accounts, and stated that the firm's capital position always satisfied Exchange requirements. Eucker also stated that he had no knowledge of any improper transactions being placed on the Orvis books.

These examples of the sworn testimony of Sloan, Anderson and Eucker are directly contrary to the testimony of Kilduff and other witnesses at trial. Anderson's claim, in particular, that he was without power at Orvis is contradicted not only by Kilduff and the other general partners who testified at trial, but by the defendant Eucker himself, who told the SEC that Sloan and Anderson ran the firm.

(e) Other Considerations - After pleading guilty, both Sloan and Eucker met with me on one occasion in my office to discuss the case in preparation for the trial against Anderson. They were both less than candid, playing down their own involvement at the expense of Anderson. Neither testified at trial.

It should only be noted that only Anderson, among all the defendants, was never prosecuted by the New York Stock Exchange in a disciplinary proceeding. The liquidator informs me that the only reason Anderson avoided an Exchange disciplinary hearing is because the Exchange, in a procedural foul-up, failed to proffer charges against Anderson within thirty days of Anderson's resignation from the Exchange. Under Exchange rules, any disciplinary action then became time-barred.



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Honorable Whitman Knapp  
United States District Judge

-6-

June 5, 1975

The Government has also notified Myron Levine that the Court requests from him a letter with his explanation to what transpired at the Exchange hearings which Kilduff and Peter Schmidt, Esq. attended. A copy of the transcript of Kilduff's and Schmidt's testimony at this trial has been delivered to Levine with instructions that Levine's letter be mailed to the Court by June 11.

Very truly yours,

PAUL J. CURRAN  
United States Attorney

By:

KENNETH R. FEINBERG  
Assistant United States Attorney  
Telephone: (212) 791-1933

cc: Jerome Londin, Esq.  
10 East 40th Street  
New York, New York

Roy Cohn, Esq.  
39 East 68th Street  
New York, New York

Stanley Arkin, Esq.  
300 Madison Avenue  
New York, New York

Dave Butowsky, Esq.  
230 Park Avenue  
New York, New York

U.S. vs. Sloan  
74 cr. 859  
Judge Knapp  
6-16-'75  
excerpts

32a

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69

MR. FEINBERG: Your Honor, if Mr. London is through,  
I will make a few comments.

THE COURT: Let them all make comments first.

MR. FEINBERG: Fine.

THE COURT: Mr. Sloan?

MR. COHN: May it please the Court, prior to the  
imposition of sentence, with the Court's kind permission,  
I did want to make a motion in arrest of judgment. I will  
try to be as brief as possible, and I appreciate your Honor's  
courtesy in suiting Judge Griesa's schedule in letting me  
come up here now.

The decision of Mr. Sloan to enter a plea here  
was a very, very difficult one. It was done on the basis  
of saving the prosecution the time and expense of a trial  
against him and it was based upon two other factors: The  
fact that Mr. Sloan was absolutely impecunious, had no way  
of getting within the time limits prescribed by counsel of  
his choice. It was impossible for me to try the case.  
He was under tremendous pressure, as Mr. Feinberg knows, we  
had a continuing dialogue between Mr. Feinberg's office and  
our office. And, indeed, keeping your Honor's chambers  
advised, it extended over a period of some two weeks.

Mr. Sloan did not want to enter the plea of guilty.  
I think I probably had something to do with prevailing upon



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2 him to do it, because, as Mr. Feinberg had explained facts to  
3 me, there was enough for me to say to Mr. Sloan that he could  
4 plead to a conspiracy to violate only Regulation T, but that  
5 would be enough if the facts were as given to me by Mr.  
6 Feinberg rather than as given to me from other sources.

7 So, after a very painstaking couple of weeks, which  
8 must have been an annoyance to your Honor's chambers as well  
9 as to Mr. Feinberg, we had to advise him that Mr. Sloan just  
10 was not going to plead.

11 Finally, there was a last-minute change. He could  
12 not get other counsel. And we worked on him about this  
13 Regulation T thing. Finally, it was agreed he would enter  
14 a plea of guilty to a conspiracy but confine the plea only  
15 to a question of violation of Regulation T.

16 Of course, the trial then proceeded as to the  
17 others.

18 What has come to my attention from the trial  
19 record, your Honor, and parts of it have been called to my  
20 attention very recently, was the fact that apparently the  
21 Regulation T theory, and indeed the conspiracy theory insofar  
22 as it related to Regulation T, did not survive the trial.  
23 I know your Honor dismissed some counts based upon Regulation  
24 T, and the thread and the --

25 THE COURT: The counts relating to Regulation T

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71

2 had been dismissed long before you pleaded.

3 MR. COHN: Your Honor, apparently the thrust of  
4 the trial testimony was that there were open disclosures of  
5 these four closed accounts and there was not this Regulation  
6 T violation that had taken place.

7 What we are dealing with here is a very great  
8 human tragedy. I know your Honor has read the probation  
9 report, and I think your Honor has gotten some of the facts  
10 herein. This is not the case of a man who is a big white-  
11 collar criminal who has profited off somebody's misery or  
12 something along those lines. Very far from it. Mr. Sloan --  
13 and I hope he does not mind my saying this in his presence --  
14 is very far from being a genius. He is a man who has led a  
15 very decent, respectable life. I don't think there could be  
16 a person who has more of a tragedy to present to a court than  
17 this man. He is absolutely broke, he does not have a penny  
18 to his name, he is hopelessly in debt to a series of hospitals  
19 due to the fact that his four and a half year old son is  
20 suffering from fatal leukemia, with only probably a short  
21 period of time in which to live. Mr. Sloan is living at  
22 his mother's home now. His income is not even close enough  
23 to begin payments for the continuing -- I know your Honor  
24 must have had some familiarity with these things -- medical  
25 bills that are piling up. I know Mr. Feinberg is cognizant



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72

2 of these facts and has been kind enough to say that he too  
3 would bring them to the Court's attention. I am sort of  
4 combining a motion in arrest with what I want to say on the  
5 subject of sentence.

6 I understand that Mr. Feinberg, however, is not  
7 going to feel he can go far enough, as Mr. Braunstein,  
8 Mr. Rosen and I had understood at the time of the plea, to  
9 say to the court that the prosecution was recommending a  
10 suspended sentence, but that Mr. Feinberg was merely going to  
11 call the personally tragic circumstances of Mr. Sloan's case  
12 to your Honor's attention.

13 I did want to make a motion, based upon the Regula-  
14 tion T situation, in what we thought had been the understandin  
15 with the prosecution at the time this plea was made, for  
16 a withdrawal of the plea of guilty to this one count.

17 THE COURT: I don't quite follow what you are  
18 saying. The minutes of the plea are here and they are quite  
19 clear that no representation of any sort had been made to  
20 the defendant as to sentence. Now you are telling me that  
21 a representation was made?

22 MR. COHN: The thrust of the conversations between  
23 Mr. Feinberg and three people -- myself, Mr. Rosen, who is  
24 here, and Mr. Harry Braunstein, a member of the bar associated  
25 with our office -- was that if Mr. Sloan -- I was not here

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2 the day of sentence -- but the representation made, as I  
3 understood it, was that Mr. Sloan had a choice. If he went  
4 to trial, obviously he was just shooting dice and had to take  
5 his chances. However, if he entered a plea of guilty and  
6 saved the government the trouble of a trial, and was available  
7 to testify if called, then in those circumstances there would  
8 be a favorable recommendation insofar as no jail.

9 THE COURT: That is precisely the opposite of  
10 what the minutes of sentence show. The minutes of sentence --

11 MR. ARKIN: You mean the minutes of plea, your  
12 Honor.

13 THE COURT: The minutes of plea are what I mean.

14 MR. COHN: Your Honor, I am not suggesting it was  
15 a question of what the Court would impose. It was what the  
16 prosecution would recommend.

17 THE COURT: "Has any promise been made to you in  
18 respect to the kind of sentence the Court might impose?"  
19 "No, sir."

20 MR. COHN: I think that is true, your Honor. I  
21 think that it was not a question of the sentence the Court  
22 would impose. It was, I think, a question of what the pro-  
23 secution would recommend.

24 Judge Knapp, this became very serious a few days  
25 ago when we received this letter, in response to a letter your



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2 Honor had sent, from Mr. Feinberg in which he seemed to raise  
3 the roof about poor Mr. Sloan, which seemed completely in  
4 derogation of the conversations Mr. Feinberg, I know in all  
5 good faith, had had with three people in our office and on  
6 which we relied in making our recommendation to Mr. Sloan.  
7 I was amazed to the point of disbelief when I read this long  
8 letter that came in, practically making a hero out of Kilduff  
9 and saying that Sloan was some kind of a bigtime operator  
10 who (a) had committed perjury, (b) had known this, (c) had  
11 done that, and all of those things. That is a very far cry  
12 from the way the prosecution was talking back at the time  
13 when the thing was hanging in balance as to whether there  
14 could be a plea or not be a plea. And it was based on those  
15 facts.

16 I think what your Honor read is absolutely true.  
17 We never suggested we had any dialogue with your Honor,  
18 your Honor's chambers at all. The dialogue was with the  
19 prosecution. What has been done in Mr. Feinberg's letter to  
20 this Court, and in statements which have been made, seem to  
21 us, and from what I understand he is not going to do today,  
22 completely in derogation of the conversations he had with  
23 the three people in our office, and which of course we relayed  
24 to Mr. Sloan. There is no question about it. And that is  
25 a ground of the motion for the withdrawal of the plea.

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2 I will be frank with your Honor. If we thought  
3 for a moment that the prosecution was going to do anything in  
4 view of all the circumstances here, and in light of a plea  
5 of guilty in the saving of the time and money of the trial  
6 as to Mr. Sloan by the government, if we thought for a minute  
7 the prosecution was not going to urge mercy to your Honor  
8 in the form of no jail, our whole --

9 THE COURT: If you thought they were going to urge  
10 mercy in the form of no jail, did they say to you they were  
11 going to urge mercy in the form of no jail?

12 MR. COHN: There is no question about that.

13 THE COURT: Did you say that?

14 MR. FEINBERG: Absolutely wrong. I could explain,  
15 your Honor, exactly what I said to these gentlemen. Mr.  
16 Sloan came into my office -- I have never spoken to Mr. Cohn  
17 about any recommendation whatsoever. In fact, the only time  
18 I have met Mr. Cohn is today. I had two telephone conversa-  
19 tions with him.

20 MR. COHN: We had six telephone conversations  
21 but it is true they were all over the telephone.

22 MR. FEINBERG: Now let me --

23 MR. COHN: I assume the person I was talking to  
24 was Mr. Feinberg.

25 MR. FEINBERG: That is correct. What I explained



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76

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to Mr. Cohn's associate and to Mr. Sloan was that if he pled  
3 guilty and came in and cooperated with the government and  
4 testified at trial, the extent of his cooperation would be  
5 made known to the Court at the time of sentence. I expressly  
6 told both of these gentlemen that the government would not,  
7 indeed could not, recommend a specific sentence and would not  
8 do it, because we have no power to do it.

9

10

Mr. Sloan came in, as did Mr. Eucker, on one oc-  
casion about a week to ten days before the trial and, as I  
11 have said in the letter, proceeded to exculpate himself.

12

I could not put him on the stand. "I didn't do anything  
13 wrong. This specific area is all that I knew about, Regula-  
14 tion T. I relied on Mr. Kilduff. I relied on Mr." --

15

THE COURT: Certainly --

16

MR. FEINBERG: And that is the end of it.

17

18

THE COURT: -- I know it is the practice of the  
United States Attorney's office to say that they will in no  
19 circumstances recommend clemency. They will even not recommen  
20 clemency to a person who testifies. He told Mr. Kilduff that  
21 they would not recommend clemency for him. It seems to me  
22 highly unlikely that they told you anything different.

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MR. MICHAEL ROSEN: My name is Michael Rosen.  
If I might: I recall one conversation with Mr. Feinberg.  
The exact words, of course, I can't recall, but I do remember

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77

2 a discussion that if Mr. Sloan did take a plea and if he came  
3 in and talked with the government -- I don't recall a third  
4 condition being that if he testified at trial -- but I do  
5 recall these words, to the best of my recollection, that the  
6 government will go to bat for -- as a matter of fact, I made  
7 a memorandum -- Mr. Feinberg is shaking his head in the  
8 affirmative -- will go to bat for Mr. Sloan. I most respect-  
9 fully feel that any communication you have had with the  
10 government --

11 THE COURT: Will go to bat for Mr. Sloan and tell  
12 the Court the extent of his cooperation.

13 MR. ROSEN: Not necessarily what he said. Judge,  
14 that was not necessarily in my mind, which I communicated to  
15 Mr. Cohn and Mr. Sloan. My thinking was at that point that  
16 I was in your Honor's courtroom several times and your Honor  
17 may remember that I said we were trying to work something  
18 out, and it was a back and forth going on.

19 THE COURT: Mr. Cohn has been around here long  
20 enough to know that the government has no powers to make a  
21 binding recommendation.

22 MR. COHN: Your Honor, yes.

23 Passing that for a minute, Judge, there is a vast  
24 difference -- let us assume for a moment, I don't know -- the  
25 government has vast powers, I don't know whether the govern-



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78

2 ment has the power to make it or not, I suppose Mr. Feinberg  
3 can say anything he wants --

4 THE COURT: He said binding.

5 MR. COHN: Yes, your Honor. He had the power to  
6 write a poisonous letter to your Honor about Mr. Sloan, which  
7 he did.

8 THE COURT: He answered a letter in response to  
9 my questions. Whether it was good, bad or indifferent, I --

10 MR. COHN: Here is what I say. In effect, Judge  
11 Knapp, we shot crap based upon our conversations with Mr.  
12 Feinberg --

13 THE COURT: I don't think a lawyer is supposed to  
14 do that. I think the greatest misfortune this fellow had  
15 was to come to you as a lawyer.

16 MR. COHN: Judge Knapp, I don't think you really  
17 mean that.

18 THE COURT: I do really mean that.

19 MR. COHN: Then let us not penalize him for his  
20 horrible choice of counsel. Grant our motion, give him a  
21 right to counsel your Honor designates or some other lawyer  
22 who is competent to defend him, but don't let us see a man  
23 see a child die while he is behind bars because of a situation  
24 like this. I have not been paid in this case since a miniscule  
25 retainer about a year ago which does not even cover dis-

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2 bursements. This is a case of a tregedy, when Mike and I,  
3 and Mr. Braunstein in our office, had to try to make a call  
4 which would result in this man being out for the remaining  
5 period of this child's life. We made that call based upon  
6 the conversations we had with Mr. Feinberg. I am now making  
7 a motion for the withdrawal of that plea, in view of the  
8 letter Mr. Feinberg wrote to this Court, in view of what he  
9 tells me his statement to the Court today is not going to be,  
10 and in view of all the facts and circumstances added to it,  
11 your Honor's appraisal of the poor advice which I have given  
12 to Mr. Sloan throughout this -- and I think, as it turns out,  
13 it was extremely poor advice, based upon the testimony that  
14 occurred at the trial. But I know your Honor is big enough  
15 and sound enough not to penalize Mr. Sloan for my mistake.  
16 This is this man's whole life now. I think the just thing  
17 here would be to permit him to withdraw his plea and have a  
18 prompt trial, with counsel. He is indigent. Your Honor  
19 would have to designate counsel from your panel or Legal Aid  
20 to represent the man.

21 THE COURT: Unfortunately, had he asked for  
22 designation of counsel before the trial I would have been  
23 glad to give it to him. No man can play fast and loose,  
24 plead guilty, let the trial go ahead, and then after the  
25 trial has been had, move to withdraw your plea. That just



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2 doesn't go.

80

3 I cannot be responsible for what you told him.  
4 Your telling him that the district attorney will go to bat  
5 for him is not in and of itself sufficient, because you  
6 certainly must have told him that the district attorney could  
7 not have regulated what I am going to do. Whatever the  
8 district attorney did, it was done in response to my question.  
9 I was advised that he had told one of the defendants he would  
10 not make a recommendation for a specific sentence, and there-  
11 fore I told him to not do that. He may have made a similar  
12 statement to you, that if he pleaded he would not recommend  
13 a sentence. Whether he recommended a sentence or whether he  
14 would not recommend a sentence is largely immaterial.

15 Mr. Sloan pleaded and was not before me but before  
16 Judge Connor with the understanding that it would be referred  
17 to me for sentence, and explicitly said he had no commit-  
18 ments about sentence. If he thought he had any commitments,  
19 either direct or indirect, through the United States Attorney  
20 or otherwise, that was the time for him to have said so.

21 MR. COHN: Your Honor, this unfortunately seems  
22 to have developed into --

23 THE COURT: On the question of what you have heard  
24 about the trial, I think that what the trial would have been,  
25 what evidence would have been offered, had Mr. Sloan been on

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81

2 trial, neither you nor I know. I did not dismiss anything.  
3 The substantive counts had been dismissed before the plea and,  
4 as you say, if Mr. Sloan at your advice wanted to play crap,  
5 as you so inelegantly put it, that is his privilege, but I  
6 cannot permit him to withdraw his plea after the possibility  
7 of a retrial is for a practical matter over.

8 MR. COHN: Judge Knapp, I was just going to say  
9 this, not to prolong this, that unfortunately it seems to  
10 have developed that there is a misunderstanding as to the  
11 factual situation concerning understanding between Mr.  
12 Feinberg and the three of us.

13 I am wondering, then, if probably the resolution  
14 of this should not, for whatever purposes might be appropriate  
15 from here on in, be in the form of a hearing rather than just  
16 the oral statements we are all making here. I would ask for  
17 such a hearing.

18 The second point, Judge Knapp, I wanted to make  
19 is this: Whereas the prosecution cannot bind the court, of  
20 course it certainly can have a mighty effect, and the fact  
21 it can have a mighty effect is best illustrated by the fact  
22 that your Honor solicited from the prosecution a statement as  
23 to the relative guilt and involvement of people, including  
24 Sloan here, and they came back with this poisonous letter,  
25 which we have scant way of attacking on this basis. It seems



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.82

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2 to me that in that letter they wrote the things they said  
3 about Sloan and the lack of position they are taking here,  
4 whether it be the words "go to bat" or "not go to jail" or  
5 "everything we can do to help" or things like that, it seems  
6 that there has been, if we are not -- and I understand Mr.  
7 Feinberg disputes our exact recollection of words here, and  
8 that is something I suppose has to be resolved at a hearing  
9 if your Honor is so disposed to permit one.

10 THE COURT: I don't see that a hearing is necessary.  
11 Whatever Mr. Feinberg said, he did not -- do I understand that  
12 you contend that he said he would recommend no sentence?

13 MR. COHN: My conversations with him, which were  
14 over the telephone, but which I reported to Mike and to Mr.  
15 Sloan, my clear understanding of the conversations with Mr.  
16 Feinberg was, the bottom line was, if Sloan took a plea and  
17 did not go to trial, if he took a plea and there was a sug-  
18 gestion as to whether it could be to a misdemeanor rather  
19 than a felony, Mr. Feinberg said it had to be a conspiracy,  
20 and then my understanding of the substance of what he said  
21 to me was: If he knew his personal situation, if he takes  
22 a plea, he is not going to go to jail; if he does not take a  
23 plea and puts us through a trial and goes to a trial, there  
24 is a good possibility he is going to go to jail.

25 Mr. Rosen's conversation -- I was not a party to

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83

2 them and I have to take Mr. Rosen's recollection -- was that  
3 the prosecution will go to bat for Mr. Sloan. I have not  
4 checked with Mr. Braunstein, except in general terms.

5 I believe, your Honor, that there are cases -- it  
6 occurs to me United States v. Hughes as one of them -- wherein  
7 without any involvement on the court's part, nevertheless  
8 statements by the prosecution, in the Hughes case, as I  
9 recall it, it was a question of whether or not the prosecution  
10 had given to the defendant a veto power over the -- it was  
11 back in the 318 days -- over the identity of a sentencing  
12 judge, that such a representation made by the prosecution  
13 can be the basis of such a motion as this, without --

14 THE COURT: That would be different than this, if  
15 the prosecution had promised you that you would not come  
16 before me but would come before some other judge, and then  
17 before me, why, that would be different.

18 MR. COHN: Not having the same opinion with you  
19 as a judge as you would with me as a lawyer, I never made  
20 any such request. The fact is that we do make a motion for  
21 withdrawal of a plea, based upon the Regulation T situation.

22 THE COURT: The Regulation T situation you have  
23 said nothing about. I mean, all you said was that the trial  
24 of Anderson and Villani, that Regulation T was not involved.  
25 It does not follow that it would not have been proved if the



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2 trial had been against Sloan.

3 MR. COHN: I am saying, your Honor, based upon the  
4 trial record and the references to Regulation T and your  
5 Honor's comments upon the failure of proof and there being  
6 no showing --

7 THE COURT: Not failure of proof. There just  
8 wasn't any occasion to prove the case against Sloan when  
9 Anderson was on trial.

10 MR. COHN: Your Honor, then it would become a  
11 question of who was Sloan conspiring with. If he was not  
12 conspiring with Anderson and Villani, with whom --

13 THE COURT: He solved that problem for us by  
14 pleading.

15 MR. COHN: Your Honor, I just cannot be quite as  
16 facile to say that the problems were solved by the plea.  
17 Apparently they were not. But, in any event, without con-  
18 tinuing the dialogue, because I don't want to impose on the  
19 Court's time, we do formally move for a withdrawal of the  
20 plea on the Regulation T ground; we move for a withdrawal  
21 of the plea on the ground that representations made by the  
22 prosecution based upon which the plea was entered have been  
23 violated in the form of this letter submitted to the court  
24 and in the form of the prosecution's evaluation of Mr.  
25 Sloan to the court which is directly opposite to what was

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85

2 committed to the counsel for Mr. Sloan, and in the alternative  
3 we ask your Honor to set a hearing on the second portion of  
4 that motion.

5 THE COURT: The first portion is denied, and the  
6 second portion is denied without prejudice to your renewing  
7 it on affidavits.

8 MR. COHN: All right. Very well, your Honor.  
9 Now does your Honor want me to talk to the question of  
10 sentence?

11 THE COURT: Yes.

12 MR. COHN: I will be very brief. Your Honor  
13 knows this case; he presided over the trial. I ask your  
14 Honor not to consider the statements made in Mr. Feinberg's  
15 letter to you, because they are unproven statements, they  
16 are evaluations, they are opinions which we find to be in  
17 sharp contrast to the facts as we have them. It is a most  
18 difficult thing in the world for the counsel for the defendant  
19 to dispute what a prosecutor or sometimes even a probation  
20 department says to a judge about their evaluation of a  
21 particular person. But their evaluation certainly should  
22 not count as evidence against him.

23 I know your Honor has found occasion in a lot of  
24 cases before him to be compassionate and lenient. When you  
25 are dealing with a man who is before the bar of justice



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86

2 for the very first time in a not inconsiderable life, who  
3 has done a great deal of community good throughout that life  
4 and who is now faced with a totally destroyed life and with  
5 a son with a matter of weeks or months in which to see day-  
6 light any more, if ever there could be an ultimate case for  
7 the exercise of your Honor's mercy and compassion in the  
8 imposition of a suspended sentence with a probationary period,  
9 I don't know of any which the factual situation could surpass  
10 as this. We leave that to your Honor.

11 THE COURT: Of course, on the question of the  
12 son, which certainly is a relevant one, there is at least  
13 this to be said: that in the nature of things this sentence,  
14 any sentence I impose, won't be executed for at least a year,  
15 because you were not here when I said it --

16 MR. COHN: I heard what your Honor had said, that  
17 he would stay the execution pending the outcome of the  
18 appeal.

19 THE COURT: That is right. So you at least have  
20 that assurance.

21 MR. COHN: Well, that is certainly something,  
22 your Honor. But I think this man, and I think probably even  
23 Mr. Feinberg in the reports he has had to confirm this, this  
24 man is a total mental wreck at this point. His life is  
25 destroyed. He is hopelessly in debt. He will probably never

wccg

87

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2 get out of it. On the \$12,000 a year salary you cannot pay  
3 off \$97,000 in doctors and hospital and medical bills incurred  
4 for this boy. The imposition of a jail sentence at this  
5 point will be so supererogatory from the standpoint of re-  
6 currence, from the standpoint of rehabilitation, or anything  
7 else, that when your Honor looks at this person as an indi-  
8 vidual, I just submit to your Honor there could be no public  
9 purpose whatsoever in the imposition of anything other than  
10 the probationary period. There is no indication this man  
11 will be a recidivist of any kind, he has never had a problem  
12 before in his life. His personal situation, whether it is  
13 cured by the final curtain coming down before he goes to  
14 jail, whatever it might be, no worse punishment could have  
15 been inflicted on a human being than has happened to this  
16 man. In the case of a first offender, who certainly cooper-  
17 ated, at least to the extent of taking a shaky plea and  
18 saving the government the time and expense of a trial, and  
19 having gone in to Mr. Feinberg and done everything he could,  
20 to add a jail sentence on top of this, I would respectfully  
21 submit, would be very uncharacteristic of the wonderful  
22 things your Honor has done for so many first offenders who  
23 have come before it.

24 THE COURT: As I understand it, it was my intention  
25 to comment only at the end. I understand you want to go back



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2       before Judge Griesa.

3               MR. COHN: I would not put it in a voluntary phase,  
4       but I have to.

5               THE COURT: I understand. I would just say this:  
6       that I recognize that punishment and rehabilitation of these  
7       defendants is not my aim in this case. The reason that I  
8       have announced a tentative decision to impose a jail sentence  
9       is that it seems to me, and it still does, but my mind is  
10      still open until I do it, that it is necessary to vindicate  
11      the system. We have daily prisoners and defendants who  
12      commit crimes which seem to me to have less effect and who  
13      are sent to jail, and this problem is nothing new to you,  
14      I am sure.

15              MR. COHN: No.

16              THE COURT: And it is that consideration which  
17      is governing me. If you want to address yourself to that  
18      point you may.

19              MR. COHN: I welcome it very much, Judge Knapp.  
20      I do have very strong feelings on the exact point you raise.  
21      In the last two or three years there has been this cry,  
22      phrased perhaps less eloquently than the way your Honor did  
23      just now, about the question of white collar crimes and what  
24      kind of an example is it if people convicted or plead guilty  
25      to white collar crimes get suspended sentence, whereas people

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.89

who are totally impecunious, although you would have to go far to find somebody who is more impecunious than Mr. Sloan is at this moment, but to see people like that go to jail and then say, "Well, so-and-so, because he was a stockbroker or a big businessman, didn't go to jail for doing something wrong," that that was something that offends the system.

I would respectfully submit, Judge Knapp, that not in your case, because I know of no situation which your Honor has had concerning this, but in the case of some of your Honor's colleagues, which some of them I think have been frank enough to admit -- when I say "admit," it is a poor choice of words.

THE COURT: "State."

MR. COHN: Right. There has been much too much emphasis on making an example out of people charged with so-called white collar crimes and attaching to those crimes a significance way beyond what the facts call for.

Take this particular case here. The people who get involved -- and I admit to some personal prejudices, probably related to sad experiences with the stock market -- but people who get involved with brokerage houses, with the stock market generally, are usually not the unsophisticated masses but are usually people who are going in, taking shots, in a game where wise men dare not tread, and going in there



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90

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2 and are far from the unsophisticated, poor minority class who  
3 are being put upon. They are usually people who go for the  
4 turn of the wheel and are prone to taking a good deal of  
5 chances, and cannot be seriously misled as to the infirmities  
6 of the entire system which governs the regulation of the big  
7 board, the American, the brokerage firms, various laxities  
8 which apply, and all of that. What seems to excite me an  
9 awful lot more than that, Judge Knapp, is the fact that --  
10 and I realize this is outside the scope of this case, but  
11 within the bounds of your Honor's comment -- when we have a  
12 situation in this city and country today, with almost a  
13 total financial collapse, a large part of which is due to  
14 fraudulent welfare and unemployment roles, paid for by  
15 people who don't choose to sit at home but go out and earn  
16 and work four, five, six, seven days a week to make \$50,  
17 \$200, \$250 a week, and pay withholding taxes and unemployment  
18 taxes and 39 cents out of every tax dollar to take care of  
19 those who don't choose to work and who phony up welfare  
20 cases, such as was on the front page of the Times yesterday,  
21 seems to me a far more egregious offense.

22 I realize those offenses are not before your Honor,  
23 and they are almost never before any judge, because no public  
24 official has the guts to come out and do anything about it.  
25 But it does become relevant, when a plea is made to your

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. 91

2 Honor from the standpoint of policymaking and satisfying  
3 other people who might have jail sentences imposed, that  
4 people involved in a stock market situation are not being  
5 given special treatment and therefore have to go to jail  
6 regardless of what your Honor ordinarily would have done,  
7 based upon the individual personal situation of a defendant.  
8

16 If a Fergus Sloan stands before your Honor, before  
9 a court for the first time, in 40-some-odd years of his life,  
10 with not a problem in the world before, with no anti-social  
11 inclinations, with nothing but a service to family and com-  
12 munity, with a son dying, having lost everything he has in  
13 the world, working for a fraction of what it is going to take  
14 him to pay off the son's doctor and medical bills, I don't  
15 believe for a minute your Honor would do anything other than  
16 impose a suspended sentence with the probationary period to  
17 make sure the prediction of rehabilitation would have to  
18 come through.

19 In the face of those facts, to bow, which is, I  
20 know, something your Honor does not do and would never do --  
21 to bow to some kind of an outcry of a broad principle saying,  
22 "This is the year to single out white collar executives or  
23 people who were once white collar executives before they  
24 became black collar people who were broke and say that al-  
25 though ordinarily that person would get a suspended sentence,



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92

I don't feel I can do it because I have to yield to the police consideration," I would submit to your Honor that the poorest example in the world to pick for a situation like that would be this man.

Your Honor has done a lot of compassionate things, and without retreating from the important principle that people who are on Wall Street or file tax returns deserve certainly no more consideration than somebody who does something wrong in some other area, I am not asking your Honor to do that at all. I am not asking your Honor to give any special consideration. What I am asking your Honor is not to use the case of this one man, with this one really unique tragedy, as a situation to make an example to satisfy an outcry insofar as this white collar business is concerned. I am asking your Honor to do what I know he always does, which is individual justice to this person, with as much compassion as his Honor can have in his heart, based upon his unblemished record and his tragic personal situation. In so doing, I don't think his Honor would be violating the principle of equal, even-handed justice one iota, and I don't think there is any one who would ever suggest you would be.

THE COURT: Thank you. My only comment is that your beginning remarks about people who get hurt in the stock

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93

2 market run contrary to the theory of why we have securities  
3 regulations.

4 MR. COHN: Well, maybe yes they do and maybe no  
5 they don't, your Honor. I think it is almost -- you came  
6 right to the point of this thing. There has almost been a  
7 singling out -- just to tell your Honor one brief incident.

8 Judge Motley has almost a standard five-year  
9 sentence for perjury. Everybody who comes in, first offender,  
10 second offender, no offender, five years. And I had a  
11 motion to reduce before Judge Motley. Almost the same dis-  
12 cussion came up. She said, "Look, I give five years out  
13 because I have to set an example. And there are other  
14 people," and so on. But she said, "I am in a state of shock  
15 because I have just read some statistics and I find out what  
16 I do is my own personal philosophy, which is totally dis-  
17 proportionate to what my colleagues here and all over the  
18 country are doing. And there is something wrong, and perhaps  
19 I am on a wrong track here." She said, "I don't propose to  
20 correct it in this case" -- it was on a motion to reduce --  
21 "but," she said, "I acknowledge fully the problem and the  
22 fact that perhaps undue emphasis is put on this particular  
23 thing by me, and that a lot of my colleagues don't share my  
24 view."

25 What I am saying to your Honor is that I don't



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94

2 think there is any more reason for singling out the stock  
3 exchange or people who invest or become partners in Orvis  
4 Brothers than there is singling out people in any other  
5 field.

6 We are not asking for more consideration, but we  
7 are begging your Honor in the case of this one poor individual  
8 not to give him less consideration than you would if it were  
9 some other type of a case. Thank you very much.

10 THE COURT: Do you want to say anything before  
11 your lawyer leaves?

12 DEFENDANT SLOAN: No, sir.

13 THE COURT: You may leave. You are excused if you  
14 want.

15 MR. COHN: Thank you, Judge Knapp, very much  
16 (Mr. Cohn left the courtroom.)

17 MR. ARKIN: If your Honor please, I would be  
18 interested in discussing sentencing theory too, but as the  
19 hour is late and the idea is general, I will confine myself  
20 to some brief remarks about my client, whom I consider to be  
21 a good and decent man, for whom jail would not be an appro-  
22 priate sentence.

23 If your Honor please, I too, at the outset, will  
24 state that I had certain understandings from Mr. Feinberg,  
25 which put me in the unhappy position of having to say there

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120

2 said.

3 THE COURT: In the first place, I guess the  
4 defendants can rise. I am not drawing any distinction between  
5 the defendants on the ground of pleading or going to trial.  
6 That is not because of what was said or what was not said.  
7 But it seems to me a difference between a defendant who  
8 pleads and who thereby shows contrition should be rewarded  
9 for the contrition, as that is an element in the punishment.  
10 You both say, although pleading, you did nothing wrong except  
11 violate the particular crime that you pleaded guilty to.  
12 On the basis of the record it just does not seem to me that  
13 that can be the case.

14 I have heard what your lawyers said and what you  
15 have said and I read the report, the statements that you  
16 both made to the probation department. I have to recognize  
17 the fact that you may be right and I may be wrong. But it is  
18 my responsibility to come to a conclusion, and I must say,  
19 on the basis of the evidence as presented, I cannot come to  
20 the conclusion you were all not aware of the fact that a  
21 crime was committed.

22 As I told you, however -- this applies only to Mr.  
23 Sloan, because Mr. Eucker, although he did plead, is appealing,  
24 and I am satisfied that he has the right to appeal, although  
25 I was not so satisfied at the time he took the plea.



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.121

2 Ordinarily on a plea this would be no occasion for staying  
3 execution of sentence, because there is no appeal. However,  
4 for the reason I indicated at the outset, should the sentence  
5 of either or both of the others be reversed, I want to be in  
6 a position to deal with that situation without your already  
7 having served your sentence. I also am glad that this gives  
8 an opportunity not to impose the sentence in this critical  
9 time in your life. This is without in your case prejudice  
10 to at that time -- your time of sentence would come in the  
11 time for execution -- it is without prejudice to calling  
12 my attention to the facts of your personal life at that par-  
13 ticular time.

14 Sentence imposed on Mr. Anderson is without  
15 prejudice to what I have said, that I am going to deal with  
16 Mr. Londin's motion on the power to impose a prison sentence  
17 at all. I am going to deal with that in a formal opinion,  
18 which I will publish. As I have told Mr. Londin, I will  
19 deal with that with an open mind when I write my opinion,  
20 and if I think I conclude I am wrong, I will say so.

21 MR. LONDIN: Thank you, your Honor.

22 THE COURT: So the sentence I impose on you is  
23 subject not only to the possibility that the Court of Appeals  
24 may conclude I was wrong, in any of the various ways that Mr.  
25 Londin has indicated -- there may be more you can think of

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122

2 between now and then -- it is also subject to the possibility  
3 I may conclude I am wrong on this one subject.

4 On the question of stay, however, I have been  
5 advised that your testimony, the testimony of all of you,  
6 is wanted in various litigations, and that you have quite  
7 properly refused to testify until sentence should be complete.

8 I view the sentence as now complete, and if you  
9 don't agree with me, my only solution to that is to revoke the  
10 stay. I think, unless somebody gives me a cogent reason why  
11 any of you should not testify in any of the civil cases where  
12 your testimony is now being required on the ground the  
13 sentence is not complete, because there is still a stay, I  
14 just have to revoke the stay. And I would think also that  
15 would apply to whether or not an appeal was pending, because  
16 there are grounds for revoking a stay or not granting a stay,  
17 pending appeal, where, for example, there is no reasonable  
18 ground of success on appeal. I would not do it on that  
19 ground. I think both appeals are obviously taken in good  
20 faith. But another ground is that a stay would create a  
21 danger to the community. That is why I say that I think if  
22 a defendant arbitrarily refuses to testify on the technical  
23 ground that the sentence is not complete, I would consider  
24 that was a danger to the community.

25 So the stay is conditioned, at least in the absence



1 WCCQ

123

2 of further argument, further cogent reason, upon the fact that  
3 there will be no attempt to raise the Fifth Amendment on the  
4 ground that the sentence has not been complete.

5 As I have told you, it is my conviction that a  
6 sentence must be imposed. If it is any comfort to you, I  
7 will say the sentence I intend to impose is less than what  
8 some of my colleagues have thought was necessary. I will  
9 impose a sentence on each of the defendants of one year and  
10 one day, and the reason for the additional day is that, as  
11 counsel will explain to you, it allows probation earlier.  
12 The stay of execution is granted until further notice of the  
13 Court.

14 Of course, both defendants are aware of their  
15 rights. Mr. Anderson, you are aware of your right to appeal?

16 DEFENDANT ANDERSON: Yes, sir.

17 THE COURT: I need not elaborate on that.

18 I would like to know how you justify Mr. Eucker's  
19 right to appeal as a poor person in light of his probation  
20 report? It seems to me he has enough money to pay for a  
21 lawyer.

22 MR. ARKIN: May I first, before I justify, have  
23 the counts outstanding dismissed?

24 THE COURT: The count outstanding is dismissed.

25 MR. ARKIN: Count 8 and 1 dismissed.

1 wccg

124

2 MR. ROSEN: The same on behalf of Mr. Sloan, all  
3 outstanding counts?

4 THE COURT: Motion granted.

5 MR. ARKIN: With respect to justifying the con-  
6 tinuation as a poor person, I observed that his income last  
7 year was about \$14,000. Considering his family obligations  
8 and his overall financial picture, quite frankly, your Honor,  
9 I don't see how he could effectively retain anybody of com-  
10 petence in New York City to mount his appeal. I just don't  
11 see it. Mind you, your Honor, I am not looking for the  
12 appeal. I think your Honor knows that.

13 THE COURT: I certainly would not assign anyone  
14 else to it or suggest anyone else be assigned to it.

15 MR. ARKIN: Thank you. But, if your Honor please,  
16 my plea is based on reality. I think anybody here, whether  
17 it be Mr. Rosen or Mr. Londin, can very well tell you what  
18 fees are for any kind of federal appeal of any substance.  
19 Even though this is not a long record in my case, the amount  
20 of money to print or even to multilith and reproduce together  
21 with legal fees would be far more than I think Mr. Eucker  
22 could conceivably carry. Justice is that kind, it is just  
23 beyond somebody with a family who makes \$14,000 a year.

24 THE COURT: I am sympathetic to him, but I just  
25 want to make sure I am allowed under the statute in that.



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125

1  
2 MR. ARKIN: I certainly would not wish to be in a  
3 conspiracy with your Honor to violate that statute.

4 THE COURT: Will you give me a memorandum on that?

5 MR. ARKIN: May it be a letter?

6 THE COURT: Oh, I don't care how it is, just as  
7 long as it points -- I am not worried about form. In the  
8 meantime, would you file a notice for Mr. Eucker?

9 MR. ARKIN: I think the way I will handle it is  
10 to make a formal application to be assigned for Mr. Eucker  
11 for this appeal and in the course of that application --

12 THE COURT: File an application in his name.

13 MR. ARKIN: A pro se.

14 THE COURT: File a pro se notice and you won't have  
15 a problem of time lapse.

16 MR. ARKIN: A pro se application and I will make  
17 it addressed to the Court of Appeals.

18 THE COURT: If it is addressed to the Court of  
19 Appeals, then you won't have to bother me with it.

20 MR. LONDIN: Would your Honor consider making the  
21 defendants eligible for parole at any time in the discretion  
22 of the parole board?

23 MR. ARKIN: You are talking about the A-2 sentence?

24 MR. LONDIN: Yes.

25 MR. ARKIN: The statistics on the A-2 sentence are

1 wccg

2 absolutely terrible. There was a recent appeal in this Court

3 THE COURT: He is just arguing that I should not  
4 do it.

5 MR. ARKIN: Nobody wants to do it. It is just  
6 worse. What happens on an A-2 sentence, to use Mr. Feinberg's  
7 favorite expression, is that you get screwed. The Court of  
8 Appeals recognized that statistically just recently in revers-  
9 ing a sentencing which was based upon a misunderstanding of  
10 what the A-2 sentence meant. That was the Catskill properties,  
11 or whatever the name was, Dubinsky or something. I would  
12 not want A-2. I just point out that to my brother.

13 MR. LONDIN: All right.

14 THE COURT: I agree with what he just said.

15 MR. LONDIN: I withdraw the request.

16 THE COURT: Any further papers that you want to  
17 have filed on any pending application, ten days.

18 MR. ROSEN: Your Honor --

19 MR. LONDIN: I take it the current bail will be  
20 continued?

21 THE COURT: Yes, of course.

22 MR. ARKIN: They have to report to probation  
23 tomorrow, if your Honor please?

24 MR. FEINBERG: Yes.

25 MR. ARKIN: Sometime, about 12 o'clock?



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127

1  
2 MR. ROSEN: Judge, one thing I am not sure of.  
3 Your Honor mentioned that these defendants were being sought  
4 to give testimony. I know of no legal process that has been  
5 served on Mr. Sloan. I may not know of it.

6 THE COURT: There is at least one I heard from a  
7 magistrate.

8 MR. ROSEN: Because, Judge, the only thing I do  
9 know is perhaps the stock exchange may want to talk to him,  
10 but I have advised him that I don't think he should talk to  
11 the stock exchange.

12 THE COURT: No, there is a case pending before a  
13 magistrate and I have been advised of this. I thought it was.

14 THE CLERK: Counsel, is Mr. Sloan going to appeal?

15 MR. ROSEN: Mr. Sloan may appeal from the denial  
16 of the application to withdraw. I don't know. I have not  
17 spoken to him. I have not spoken to Mr. Cohn.

18 THE COURT: Yes, that is correct.

19 MR. ROSEN: I just don't know, Judge. I have not  
20 had a minute to speak to him. But if there is any appeal,  
21 it will be filed within the 10-day period.

22 THE COURT: I had forgotten about that application.  
23 If you want to appeal, you may do so by filing a notice of  
24 appeal, but that won't run until after you have made your  
25 motion. That application is denied without prejudice to your

1 wccg

2 application to make a motion.

3 THE CLERK: You have 10 days to file.

4 THE COURT: You have 10 days to file any further  
5 motion.

6 MR. ROSEN: Thank you.

7 MR. LONDIN: Thank you, your Honor.

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FERGUS M. SLOAN, JR.

[the SOUTHERN DISTRICT of NEW YORK]

DEFENDANT

DOCKET NO. 74 Cr. 859 (WK)

## JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH	DAY	YEAR
6	16	75

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

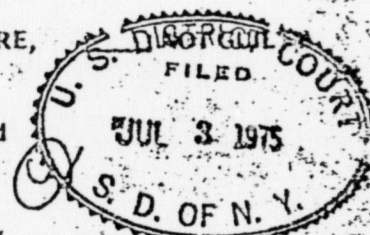
☒ WITH COUNSEL Roy M. Cohn, Esq.

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,☐ NOLO CONTENDERE,

being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☐ GUILTY.

FINDINGS

JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing with others to commit offenses against the United States and to violate T. 15, U.S.C., §§78g, 78h, 78j(b), 78q(a) and 78ff, 12 C.F.R. 220; 17 C.F.R. §§240.8c-1, 240.10b-5, 240.17a-3, 240.17a-4, 240.17a-5 (T. 18, U.S.C., §371).

SENTENCE

PROBATION

ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1) year and one (1) day on count 1. Execution of the sentence is stayed pending appeal. Present bail continued and defendant to file new bail pending appeal.

SPECIAL  
CONDITIONS  
OF  
PROBATION

MICROFILM

JUL 14 1975

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends

It is ordered that the Clerk deliver a certified copy of this judgment, and commitment to the U.S. Marshal or other qualified officer.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

- against -

FERGUS M. SLOAN, JR., et al.,

Defendants.

:  
: 74 Cr. 859 (WK)

:  
: NOTICE OF MOTION

-----X  
S I R :

PLEASE TAKE NOTICE that upon the annexed affidavits of Fergus M. Sloan, Jr. and Michael Rosen, Esq., sworn to June 23, 1975, the undersigned will move this Court before Honorable Whitman Knapp, a Judge of this Court, at such time and place as may be fixed by the Court, for an order granting leave to the defendant Fergus M. Sloan, Jr. to withdraw his previously entered plea of guilty herein, and to allow him to stand trial on the merits, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York  
June 25, 1975

Yours, etc.,

SAXE, BACON & BOLAN, P.C.  
Attorneys for Defendant  
Fergus M. Sloan, Jr.  
39 East 68th Street  
New York, New York 10021  
(212) 472-1400

TO: PAUL J. CURRAN,  
UNITED STATES ATTORNEY  
Attorneys for Plaintiff  
St. Andrews Place  
New York, New York 10007

Attn: A.U.S.A. Kenneth Feinberg



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

69a

-----X  
UNITED STATES OF AMERICA :  
 : 74 Cr. 859 (WK)  
 - against - :  
 : AFFIDAVIT  
FERGUS M. SLOAN, JR., et al., :  
 :  
 Defendants. :  
-----X

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NEW YORK)

FERGUS M. SLOAN, JR., being duly sworn, deposes and says:

1. I am the defendant in this action and submit this affidavit in support of my application for leave to withdraw my plea of guilty herein. On June 16, 1975, I was sentenced to one year and one day imprisonment.

2. In considering whether or not to enter a plea of guilty in this action, I relied upon what I was told by my attorneys, Roy M. Cohn and Michael Rosen, and by Assistant U.S. Attorney Kenneth Feinberg. I was told that Mr. Feinberg, if I took a plea and would make myself available to him and cooperate, would "go to bat" for me with the sentencing judge. Mr. Feinberg has conceded this to the Court. While I understand that no one could promise to bind the judge's hands to a set disposition, I believed that when the prosecutor took an affirmative position with the Court, the Court would go along with what was suggested by him.

3. I reasonably believed that Mr. Feinberg would tell the Court that I had cooperated candidly - which I did - and that upon all the facts and circumstances my incarceration would not be indicated. I was available and ready to testify at the trial, but was not called by Mr. Feinberg.

4. I was shocked and stunned when, on the day of sen- 70a  
tence, I read the letter that Mr. Feinberg had written to the  
Court depicting me as a liar and prime mover of the conspiracy  
charged in the indictment. Those allegations are untrue.

5. I was similarly shocked that the Court stated, in  
essence, that I made a gross mistake in my choice of counsel and  
that counsel may have given me incorrect advice. Apparently my  
counsel heard Mr. Feinberg correctly when the latter stated he  
would "go to bat" for me. Mr. Arkin, counsel for a co-defendant,  
recalled the identical phraseology being used by Mr. Feinberg.

6. In fact, Mr. Feinberg, in open court, agreed with  
Mr. Rosen's recollection that he would "go to bat" for me at sen-  
tence if I took a plea and "cooperated" - but did not have to  
testify at trial.

7. Clearly, nothing Mr. Feinberg has said or done could  
reasonably be construed as going "to bat" for me. On the contrary,  
the thrust of Mr. Feinberg's position pre-sentence and upon sen-  
tence was that incarceration of me was necessary. The Court will  
undoubtedly remember that Mr. Feinberg seemed more concerned about  
the impact of the next morning's New York Times than the particular  
and unique circumstances of my case.

WHEREFORE, for the reasons set forth above and in the  
accompanying affidavit of counsel, this motion should be granted  
in all respects.

151  
FERGUS M. SLOAN, JR.

Sworn to before me this  
23rd day of June, 1975

MICHAEL ROSEN  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 251, 1st District, Kings County  
Commission Expires March 30, 1977



-----X  
UNITED STATES OF AMERICA :

- against - :

FERGUS M. SLOAN, JR., et al., :

Defendants. :

74 Cr. 859 (WK)

AFFIDAVIT

-----X  
STATE OF NEW YORK )  
                          ) SS.:  
COUNTY OF NEW YORK)

MICHAEL ROSEN, being duly sworn, deposes and says:

1. I am a member of the firm of Saxe, Bacon & Bolan, P.C. and was one of the attorneys who advised and represented the defendant Fergus M. Sloan, Jr. in the above-entitled action.

2. I recall precisely at one of my conversations with Assistant United States Attorney Feinberg that he assured me if Mr. Sloan would take a plea and cooperate with the government, Mr. Feinberg would "go to bat" for Mr. Sloan upon sentencing. I recall distinctly that Mr. Feinberg rejected an offer of a plea to a misdemeanor and insisted on a felony. I recall distinctly Mr. Feinberg indicated that he did not think that Mr. Sloan's situation would result in a jail sentence.

3. In your deponent's mind, I concluded that indeed, if Mr. Sloan would plea to a count of the indictment and make himself available to Mr. Feinberg for whatever purposes the latter deemed necessary, that Mr. Feinberg would recommend to the sentencing judge that Mr. Sloan not be imprisoned. At that point I was aware, as I believe Mr. Feinberg was, that Mr. Sloan was in dire financial straits and was engulfed with the tragedy afflicting his young child who is suffering from leukemia.

4. In my conversations with Mr. Sloan and my partner, Roy M. Cohn, I did indicate that I thought Mr. Feinberg would recommend to the sentencing judge that Mr. Sloan not be jailed. I concede Mr. Feinberg never said directly that he would recommend no jail; however, based upon my experiences as a former Assistant United States Attorney, and being generally aware of the nature of the disposition process in Federal Court, I reasonably concluded that if the government recommended no incarceration, then in view of the facts and circumstances here, including a prior unblemished record, Mr. Sloan would not go to jail. I never directly represented to Mr. Sloan that he would not go to jail; however, I must admit that I offered him my feelings that incarceration would not be directed by the Court if Mr. Feinberg kept his word. I believe Mr. Sloan's compliance concerning his plea was occasioned by his reliance on my discourse with him, as well as conversations with Mr. Cohn. 72a

5. Most significant is the fact that Mr. Feinberg concedes that he used the words "go to bat" for Mr. Sloan upon sentence and his taking such a stance was not conditioned upon Mr. Sloan's testifying at trial. Clearly, Mr. Feinberg did not go to bat for Mr. Sloan, on the contrary, Mr. Feinberg's written communication to the Court presentence and his statements at sentence were clearly pointed at convincing the Court to jail Mr. Sloan. Furthermore, Mr. Arkin, another attorney in the case, also recalls Mr. Feinberg's use of the words "go to bat" in connection with his client, and again no such action was taken by Mr. Feinberg.

6. I believe that absent the discussions your deponent had with Mr. Feinberg and the transmittal of the essence thereof to Mr. Sloan, no plea would have been entered by Mr. Sloan, and, in fact, he would have gone to trial.



WHEREFORE, it is respectfully submitted that in light of all the facts and circumstances herein, this Court should allow Mr. Sloan to withdraw his previously entered plea of guilty, and allow him to stand trial on the merits.

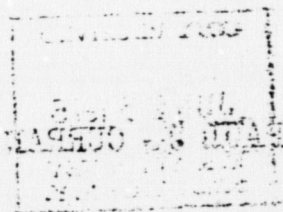
/s/

MICHAEL ROSEN

Sworn to before me this

23rd day of June, 1975

SUSAN BELL  
NOTARY PUBLIC, STATE OF N.Y.  
#31-4607703, N.Y. COUNTY  
EXPIRES MARCH 30, 1977



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

: AFFIDAVIT IN OPPOSITION

-v-

: 74 Cr. 859 (WK)

FERGUS M. SLOAN, JR., et al.,

:

Defendants.

:

-----X  
STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

KENNETH R. FEINBERG, being duly sworn, deposes and  
says:

1. I am an Assistant United States Attorney in  
the office of Paul J. Curran, United States Attorney for the  
Southern District of New York, and am the Assistant in  
charge of the prosecution of the above-captioned case. I  
make this affidavit in response to a motion, made by the  
defendant Fergus M. Sloan, Jr. on June 25, 1975, to withdraw  
his plea of guilty to conspiracy entered on March 31, 1975.

2. Indictment 74 Cr. 859 (WK), filed on September  
10, 1974, charged the defendant Sloan and four others with  
conspiracy to violate the securities laws of the United  
States, in violation of Title 18, United States Code,  
Section 371. The indictment was assigned to the Honorable  
Whitman Knapp, United States District Judge for the Southern  
District of New York. On March 31, 1975, Sloan appeared  
before Judge William C. Conner (in Judge Knapp's absence)  
with counsel from the firm of Saxe, Bacon & Bolan, P.C.



(but not Mr. Cohn or Mr. Rosen) and pleaded guilty to conspiracy. On June 16, 1975, Sloan was sentenced to a term of imprisonment of one year and one day, execution stayed pending appeal.

3. On or about June 25, 1975 the defendant Sloan filed this instant motion, to withdraw his guilty plea on the ground that your affiant reneged on a promise that he had made to Mr. Sloan that, if Sloan pleaded guilty and cooperated, the Government would "go to bat" for him at the time of sentencing. The defendant Sloan argues that he pleaded guilty and subsequently made himself available to the Government on the basis of such a representation and that, absent such a representation "no plea would have been entered by Mr. Sloan, and, in fact, he would have gone to trial." (Affidavit of Mr. Rosen, p. 2 ¶6.) The defendant Sloan argues that, far from "going to bat" for him, the Government sent a letter to the Court which proved most harmful to the defendant.

4. In opposing the defendant Sloan's motion, the Government would first point out what is not alleged in the defendant's moving papers" no where does the defendant Sloan or his counsel allege that the Government promised that Sloan would not go to jail; to the contrary, both Sloan and his counsel "concede" that no such representation was made. (Sloan affidavit, p. 1 ¶2; Rosen affidavit, p. 2 ¶4.) In addition, Sloan concedes that only if he made himself available to the Government and agreed "to cooperate" would the Government "go to bat" for him (Sloan affidavit, pp. 1, 2 ¶¶2, 6). Nor is there any allegation that coercion or pressure was brought to bear on Sloan. Most importantly,

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M-410

no where does Sloan or his counsel allege that the Court's allocution made at the time of the plea was improper in any respect, i.e., no where does Sloan contend that, at the time of the plea, he expressed any reservations, that the plea was conditional on promises made by the Government or that he was pleading guilty on the basis of representations or promises of any sort made by the Government. Simply stated, Sloan pleaded guilty because he was guilty and stated to Judge Conner that his plea was not conditioned in any way on promises made to him by the Government.

5. The Government, through your affiant, did state to both the defendants Sloan and Eucker that if they pleaded guilty and cooperated with the Government in the preparation and presentation of the trial against the defendant Anderson (as the defendant Kilduff already was doing) the Government would, in such a case, "go to bat" for them. The crucial fact is that neither Sloan nor Eucker did so cooperate; to the contrary, both of them were formally interviewed by your affiant, in the presence of David Soffler of the SEC, and proceeded to exculpate themselves completely and inculcate the defendants Anderson and Kilduff. Indeed, the defendant Eucker went so far as to state that no crime had been committed by the defendants and that proper bookkeeping procedures would have showed a ratio of less than 20-1. Sloan stated to your affiant and Mr. Soffler that he had no knowledge of any improper bookkeeping and that he relied completely on Kilduff and Anderson. In light of the above, the Government saw no purpose in having either Sloan or Eucker testify.



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6. Since the condition for the Government "going to bat" for Sloan had not been met-Sloan having failed to cooperate-the question might then be asked why did the Government go so far as to write a letter to the Court which was so critical of Mr. Sloan. The answer, of course, is that the Government was instructed to do so by the Court in a letter of May 7, 1975, a copy of which was sent to counsel for the other defendants. The reaction of counsel to the Court's letter is both interesting and enlightening with regard to the instant motion: counsel for Anderson had constant conversations, both by telephone and in person, with your affiant requesting that the Government's drafted response to the Court contain certain information and that other information be deleted. On one occasion Anderson's counsel actually appeared in my office and read over the Government's proposed letter, making suggestions. Counsel for the defendant Eucker, upon receiving a copy of the Court's letter, immediately inquired of your affiant if the Government would oppose his application that no specific jail time be suggested by the Government, in light of the Government's earlier representations that, as is its normal practice, it would not make a specific recommendation to the Court. The Government agreed, informing Eucker's counsel, however, that the general tone of the Government's letter would not be favorable to Eucker and that counsel was invited to read the draft and made suggestions and requests. Eucker's counsel never made any further inquiries of this office, even after the letter was sent to the Court and to all the defendants. (It should be noted

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M-401

in this regard that, as of the date of this affidavit in opposition, Eucker's counsel has not joined Sloan in an attempt to set aside his client's guilty plea on the ground of Government misrepresentations.)

7. Neither the defendant Sloan nor his counsel did anything after receiving a copy of the Court's letter of May 7--no inquiries of this Office, no suggestions, no questions, nothing! In point of fact, the defendant Sloan states in his affidavit that he did not even read the Government's letter for the first time until the date of sentence (Sloan Affidavit, p. 2 §4.) Counsel for Sloan are being remarkably disingenuous in arguing that the Government surprised Sloan by failing to "got to bat" for him and, instead, writing such a letter to the Court. The fact is--where was Sloan's counsel during the period of a month after the Court sent its letter of May 7: Why didn't counsel inquire of this office as to what its position was concerning the defendant Sloan? Instead, Sloan was left in the dark until the very date of sentencing.

8. Since the Government concededly did not promise Sloan that no jail term would be imposed; since Sloan entered his plea voluntarily, stating to the Court that no promises had been made by the Government to induce him to plead guilty; and, since Sloan failed to cooperate with the Government, resulting in the Government's position towards Sloan as expressed in its letter to the Court, the defendant Sloan's motion is totally without merit.



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M-401

WHEREFORE, for the reasons stated, the Government respectfully prays that the defendant's motion be in all respects denied.

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KENNETH R. FEINBERG  
Assistant United States Attorney

Sworn to before me this  
day of July, 1975.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :

- against - :

74 Cr. 859 (WK)

FERGUS M. SLOAN, JR., et al., :

REPLY AFFIDAVIT

Defendants. :

-----X  
STATE OF NEW YORK )  
                          ) SS.:  
COUNTY OF NEW YORK)

MICHAEL ROSEN, being duly sworn, deposes and says:

1. I am a member of the firm of Saxe, Bacon & Bolan, P.C., attorneys for the defendant Fergus M. Sloan, Jr., and submit this affidavit in reply to the government's opposition to defendant's motion to withdraw his plea of guilty, entered on March 31, 1975.

2. The government's affidavit concedes that the Assistant United States Attorney:

"did state to...[Sloan] that if [he] pleaded guilty and cooperated with the Government in the preparation and presentation of the trial against the defendant Anderson...the Government would, in such a case "go to bat" for [him]" (p. 3; paragraph 5) (Emphasis added.)

3. It must be noted, however, that at the sentence Mr. Feinberg conceded that his "going to bat" for Mr. Sloan was not conditioned on Sloan's testifying at the trial.

4. Mr. Sloan then entered his plea of guilty and was made available for whatever purpose the government desired.

5. Mr. Feinberg now asserts (p. 3; paragraph 5) that Sloan did not "cooperate," but, on the contrary, he was interviewed by Mr. Feinberg and an SEC agent, and exculpated himself but inculpated Anderson.

6. In light of Mr. Feinberg's statement quoted in paragraph 2 of this affidavit, it defies credulity that he can assert to this Court that



Sloan did not "cooperate." Mr. Feinberg wanted a plea from Sloan and cooperation from Sloan in the case "against the defendant Anderson." (Emphasis added.)<sup>81a</sup>  
That is exactly what he got!

7. Mr. Feinberg has no grounds to squirm out of his end of his bargain. By concluding that he saw no purpose in using Sloan at the trial is no reason for breaking the agreement to "go to bat" for Sloan.

8. Thus, on the disputed issue of the terms of the agreement, it narrows down to (1) what was meant by "cooperate," (2) did Sloan "cooperate" and (3) what was Sloan willing to do.

9. The New York State Court of Appeals, on June 16, 1975, decided the case of People v. Maney (N.Y.L.J., 7/10/75, p.1). In Maney, the defendant and the prosecutor's office negotiated a "cooperation agreement." The defendant agreed to supply the prosecutor with information and evidence against others and testify at the Grand Jury and trial. It was further agreed that the defendant could plead to a misdemeanor and that the prosecutor "would recommend to the sentencing court that the defendant be sentenced to a term of probation and not a term of imprisonment." (Emphasis added.)

10. Thereafter, the defendant carried out his obligations pursuant to the agreement. The defendant then offered to plead to a misdemeanor, which the prosecutor approved. The Court, in light of all the charges, was reluctant to accept the plea. The defendant pressed his contention that he was induced to make the agreement by representations of the prosecutor that the Court would acquiesce in his recommendations.

11. The Court ordered a hearing to determine what commitments, if any, had been made by the prosecutor.

12. After the hearing the Court held that the defendant acted "in reliance" upon representations of the prosecutor and that "reluctantly" the plea would be accepted.

13. The trial Court, at sentencing, however, held that any representations made by the prosecutor related only to the acceptance of the guilty plea and not to sentencing. The defendant was sentenced to a one-year term of imprisonment.

14. The Appellate Division and Court of Appeals affirmed. The latter stated, however:

"With respect to the 'cooperation agreement,' the District Attorney, in consenting to a misdemeanor plea...and by recommending to the trial judge a sentence of probation, fulfilled his obligations under the agreement." (Emphasis added)

The Court held, however, that the defendant cannot be heard to complain because the trial judge did not follow the prosecutor's recommendation.

15. In the case at bar, the prosecutor did not fulfill his obligation under the agreement, i.e., to "go to bat" for Sloan with the sentencing judge, although Sloan fulfilled his part of the agreement. On the contrary, the prosecutor urged Sloan's incarceration. In no way can that position be construed as "going to bat" for Sloan.

16. While we recognize that the trial judge may have declined to go along with the prosecutor, it is the latter's failure to comply with his agreement that bottoms Sloan's application to withdraw his plea. No appeal has been taken from the sentence as in Maney, supra. Sloan asks to withdraw his plea and stand trial.

17. At the very least, Sloan requests that the Court order a hearing to determine what commitments were made by the government and whether Sloan relied thereon.

WHEREFORE, it is respectfully requested that the defendant Sloan's applications be granted in all respects.

Sworn to before me this

16<sup>th</sup> day of July, 1975

/s/  
MICHAEL ROSEN

SUSAN FELL  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 31-4607701 New York County  
Commission Expires March 30, 1977



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA :

- against - :

FERCUS M. SLOAN, JR., et al., :

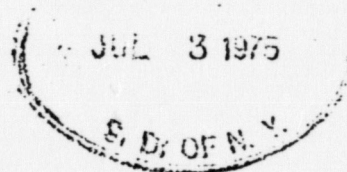
Defendants. :

-----x  
KNAPP, D.J.

Defendant Fergus M. Sloan, moves for leave to withdraw his plea on the ground that he had been assured that if he would plead and make himself available to and cooperate with the government, Assistant United States Attorney Kenneth Feinberg would "go to bat" for him with the sentencing judge. Thus, defendant Sloan asserts:

"I was told that Mr. Feinberg, if I took a plea and would make myself available to him and cooperate, would 'go to bat' for me with the sentencing judge."

Subsequently, Mr. Feinberg concluded that defendant Sloan had not cooperated and accordingly did not "go to bat" for him. As I find that Mr. Feinberg did not act in bad faith in coming to this conclusion as to defendant Sloan's coop.



#42729

MEMORANDUM AND ORDER

74 Cr. 859

(or lack of it), I find no reason for permitting a withdrawal of  
the plea or otherwise disturbing the judgment. 1/

The foregoing adequately disposes of defendant's motion, but I think a few words are in order to explain the background of the letter Mr. Feinberg actually wrote to the Court.

Sometime after the conviction of the defendant Anderson, the Court addressed a letter to Mr. Feinberg with copies to all defendants requesting among other things:

- a) a specific recommendation as to what punishment should be imposed on defendants Sloan, Eucker and Anderson; and
- b) the government's appraisal of the relative guilt of those defendants.

Shortly after all defense counsel had received their copy of the Court's letter, I received a telephone call from Stanley Arkin, Esq., attorney for defendant Eucker, describing the representations that had been made to him at the time of defendant Eucker's plea (which representations were substantially similar to those now claimed to have been made to the defendant Sloan). Mr. Arkin took the position that a defendant might fairly expect that the government would not make a specific recommendation of sentence. I agreed with Mr. Arkin, and rescinded my request insofar as it asked for a recommendation as to sentence. The Court's letter drew no response from anyone on defendant Sloan's behalf.



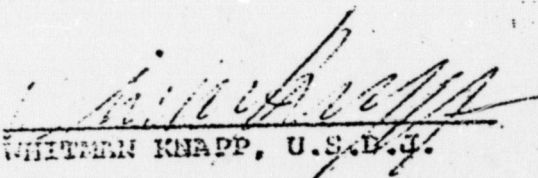
In substance, the letter from Mr. Feinberg added nothing to the position he had taken on suggestion at the trial of defendant Anderson - and, with minor exceptions - referred to no facts not implicit in the trial testimony. He did say that the defendant Sloan had been "less than candid" in his post-plea statements to the government, a conclusion which I have found is one to which Mr. Feinberg might in good faith have arrived.

In conclusion, I may say that the letter was totally without effect upon the sentence imposed, which is the minimum I felt could conscientiously be arrived at. Accordingly, the motion granting leave to withdraw his plea is denied.

SO ORDERED.

Dated: New York, New York

July 2, 1975.

  
WHITMAN KNAPP, U.S.D.J.

### FOOTNOTE

14

It is not disputed that defendant Sloan in pleading guilty before Judge Connor specifically stated that no promise or prediction had been made with respect to the kind of sentence the Court might impose (Tr. p.5 March 31, 1975).





UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

-----X  
UNITED STATES OF AMERICA,

- against -

74 Cr. 859

NOTICE OF APPEAL

FERGUS M. SLOAN, JR., ET AL.,

Defendants,  
-----X

S I R S :

PLEASE TAKE NOTICE that Fergus M. Sloan, Jr. the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from an order of the Honorable Whitman Knapp, entered 3 day of July, 1975, denying the defendant's motion for leave to withdraw his previously entered plea of guilty.

DATED: New York, New York  
July 31, 1975

Yours, etc.

SAXE, BACON & BOLAN, P.C.  
Attorneys for Defendant  
Fergus M. Sloan, Jr.  
39 East 68th Street  
New York, New York 10021  
(212) 472-1400





COPY RECEIVED

AUG 27 1975

PAUL J. CURRAN

U. S. ATTORNEY  
SO. DIST. OF N. Y.